

VIRGINIA HOUSING COMMISSION

2011 ANNUAL REPORT

2011 Virginia Housing Commission

Legislative Members

Delegate John A. Cosgrove - Chair

Senator Mamie E. Locke - Vice Chair

Senator John C. Watkins

Senator Mary Margaret Whipple

Delegate David L. Bulova

Delegate Rosalyn R. Dance

Delegate Daniel W. Marshall, III

Delegate G. Glenn Oder

Citizen Members

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Executive Summary

The Virginia Housing Commission "VHC", a legislatively based commission, works through a year-long process to create and recommend bi-partisan, housing-related legislation to alleviate the Commonwealth's concerns regarding neighborhoods, mortgages, affordability of housing, and other issues relevant to housing.

The Commission is divided into four permanent work groups, Affordable Housing and Real Estate Law, Common Interest Communities, Environmental Issues, and Neighborhood Transitions, as well as three sub-workgroups, Mortgages, Time-Shares, and Water and Sewer, each composed of legislators and interested stakeholders. They are the conduits used to work together to form solutions and good compromise legislation in preparation for the legislative session. All work group meeting agendas and summaries are posted to the Virginia Housing Commission website (<http://dls.state.va.us/houscomm.htm>).

The Commission was created by the 1970 General Assembly (HB 1231, 2004) "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," and became a permanent legislative commission in 2004. The Commission works to fulfill that initiative while expanding the Commission's scope of topics as the housing needs of the Commonwealth have grown as well.

Chaired by Delegate John Cosgrove, with Senator Mamie Locke serving as the vice-chair, the Commission has 11 members: three members of the Virginia Senate, five members of the House of Delegates, and three citizen members appointed by the Governor. Most have a housing background, and all have a strong interest in housing concerns.

Topics are chosen for study by the Commission chair and with the recommendation of the work group chairs in addition to referred bills from the General Assembly, as well as topics determined by the current housing work group chairs.

The Commission held four full Commission meetings throughout the 2011 interim where speakers from the Federal Reserve Bank, Department of Housing and Community Development, and Virginia Housing Development Authority, among other entities, worked to give the Commission members background information on housing trends and best practices in the Commonwealth. All presentations are available online. In addition to full Commission meetings, work group meetings were held throughout the interim to provide for a more intensive discussion involving interested parties. All meetings were open to the public, and meeting notices were posted on the General Assembly website, and the Housing Commission website.

Eight pieces of legislation were recommended by the Commission for the 2012 Legislative Session and they include the following: a bill on Receivership (HB 491, R. Dance) (SB 122, J. Watkins); three landlord-tenant bills: (HB 502, R. Dance), accounting

of rental payments (SB 34, M. Locke), and a prohibition on self-help eviction (SB 35, M. Locke); landlord-tenant issues related to water and sewer services (HB 567, D. Marshall); licensing and registry requirements for mortgage loan originators (HB 570, D. Marshall) (SB 75, J. Watkins); and an owner-financing exemption from mortgage loan originator licensing and registry (HB 572, D. Marshall) (SB 76, J. Watkins). Full descriptions of bill history and content are available in the Housing Commission summaries found online.

The Commission, in 2011, studied, debated, and evaluated issues to determine the necessity for legislative action on many housing issues and remains an active and crucial component in creating a remedy for the housing concerns of the Commonwealth.



VIRGINIA HOUSING COMMISSION

AGENDA

Virginia Housing Commission House Room C, General Assembly Building April 27, 2011 10:00 A.M.

Members Present: Delegate John Cosgrove, Delegate Rosalyn Dance, Delegate Daniel Marshall, Senator John Watkins, Senator Mary Margaret Whipple, Melanie Thompson, T.K. Somanath, Mark Flynn

Staff Present: Elizabeth Palen, Jillian Malizio, Beth Jamerson

I. Welcome and Call to Order

- **Delegate John Cosgrove; Chair**
 - The meeting was called to order at 10:05 AM

II. Agency Update

- **Bill Shelton, Director, Virginia Department of Housing & Community Development (DHCD)**
 - DHCD's mission is to work in partnership with the Housing Commission and the Virginia Housing Development Authority (VHDA) to make Virginia's communities safe, affordable, and prosperous places in which to live, work, and do business. However, the economic reality and policy environments remain challenging.
 - The challenging economic situation limits the ability to do work, and DHCD has had to be creative in order to respond to problems in a number of different areas.
 - DHCD has a broader mission than just housing; it includes a comprehensive view of the community with an emphasis on economically distressed communities. DHCD's mission includes supporting affordable housing options, building viable communities, creating and sustaining a safer built environment, assisting local and regional groups, and participating in critical studies. DHCD does a lot in the area of building and safety, and Virginia is one of the first states to have a Uniform Safety Code. DHCD also emphasizes working with regional groups.
 - Affordable Housing:

- DHCD continues to oversee federally-funded housing and homeless programs amid shifting federal priorities.
- Historically the agency’s budget has been around \$100–\$120 million but recently they have received over that amount in stimulus money alone, so the budget has almost doubled in the last two years.
- During the 2011 session the General Assembly amended The Livable Homes Tax Credit with H.B. 1950 [§58.1-339.7 of the Code of Virginia] to increase the maximum amount of credit available from \$2,000 to \$5,000. The program makes houses more accessible and livable. The availability of the credit increase has been extended to homebuilders and licensed contractors to allow them to use the credit.
- The Communities of Opportunity launched an affordable rental tax credits program in January. The program provides tax credits to managers of affordable rental housing in less-impooverished areas within the Richmond metropolitan area who participate in the Housing Choice voucher program. This provides an incentive to use vouchers across the market instead of concentrated in areas.
- **Delegate Marshall**—Asked if DHCD will monitor this program.
- **Bill Shelton**—Confirmed that DHCD will administer the program. Landlords will apply to DHCD, it will issue certificates, and then the landlords will get the tax credits back.
- **Delegate Marshall**—Asked whether regulations have been drawn for the program.
- **Bill Shelton**—The legislation called for guidelines, and DHCD has indeed drawn them up.
- Homeless Programs
 - State housing policy recommends more effective approaches to preventing and overcoming homelessness. DHCD is beginning to implement these approaches with more emphasis on rapid re-housing and permanent supportive housing. The agency has limited resources, but is moving state general funds it receives to support these programs. If DHCD can intervene as soon as people become homeless and move them back into housing, it reduces long-term support needs through social services.
 - DHCD wants to better coordinate social services and housing for homeless. They have launched the Homeless Services Coordinating Council to improve state agency coordination.
 - **Delegate Cosgrove**—Asked where homeless people are currently being housed, as far as shelters and other structures. Asked whether DHCD is building any new facilities or if they are taking advantage of existing housing inventory.
 - **Bill Shelton**—There is an existing shelter support network, which is mostly philanthropic. In the current environment there is a lot of housing stock available and DHCD is trying to buy it through stimulus programs. Homeless programs provide for those whose income is usually less than 30% of the average income. There are organizations DHCD can support through financing.

- Building Viable Communities:
 - DHCD conducts oversight of federally funded community development programs.
 - DHCD has increased funding for Main Street and Enterprise Zone grants. The General Assembly made changes to the Enterprise Zone grant program in 2010, which modified Enterprise Zone job credit application requirements (H.B. 1599, S.B. 1348), and authorized the DHCD to redesignate joint enterprise zones (H.B. 2131, S.B. 779). Older “white elephant” properties are now sitting vacant. These changes allow the DHCD to intervene and provide some incentive money to help make the building more economic for the community.
 - DHCD is also receiving new funding for industrial site revitalization.
- Safer Built Environment:
 - The 2009 Uniform Statewide Building Code and the Statewide Fire Prevention Code and related regulations are now in effect.
 - Defective drywall:
 - DHCD is currently considering a remediation protocol for homes and structures containing defective drywall. Concerns include how to fund such a protocol and what standards would be used. Implementation is slow because there is no national remediation standard. There is also a concern with timing, because the standards DHCD adopts will need to satisfy any national standards that are issued.
 - **Delegate Marshall**—Asked whether there is a complete inventory of the houses that have been affected.
 - **Bill Shelton**—DHCD does not have every street address, but they know the general areas affected. There is a database that was shared with the Attorney General from the Consumer Product Safety Commission.
 - **Delegate Marshall**—Asked if they are working on obtaining information for all the houses affected by Chinese drywall. He expressed concern that buyers moving to an affected area may not know if they are buying a house with defective drywall.
 - **Bill Shelton**—Legislation has been passed that deals with disclosure. Sellers are required to disclose whether they know the drywall is defective. The DHCD has asked people to register, but it is voluntary, not a requirement.
 - **Mark Flynn**—Asked if the issue was confined to the Tidewater area.
 - **Bill Shelton**—Tidewater is where the problem is concentrated. Some townhomes in the Richmond area have been affected, but it is difficult to definitively know if that is the full extent of the problem.
 - **Mark Flynn**—News reports have suggested that perhaps the same issue may be showing up in some non-Chinese drywall.
 - **Bill Shelton**—The Consumer Product Safety Commission says that there was some testing of domestic drywall, but they could not prove that it definitely did or did not have the same problems. They cannot rule out that it couldn’t happen in the United States.

- **Delegate Marshall**—Asked whether DHCD is tracking to see what other affected states, including Florida and Mississippi, are doing about the situation.
 - **Bill Shelton**—DHCD is watching those states, and there has been some state response. The product distributed in Virginia came from a different company than the drywall distributed in other states, which is the company that has a hand in fixing the houses.
 - **Delegate Marshall**—Asked how that company is actually fixing the houses.
 - **Bill Shelton**—Generally, the remediation process consists of pulling out the wiring and electric components from the drywall. It could affect copper, appliances, and any soft products.
 - **Delegate Cosgrove**—Asked if there has been a definitive set of standards and procedures for the replacement of the Chinese drywall.
 - **Bill Shelton**—A Louisiana court made an award based on its determination of how much it would cost to replace the drywall. The National Association of Home Builders (NAHB) has issued guidelines. Delegate Oder has asked the Governor to have DHCD look at them, and DHCD has, but it will be late July or early August before something is actually adopted. DHCD wants to adopt something that will withstand the test of scrutiny.
 - **Delegate Cosgrove**—Asked if DHCD will have to wait for a federal standard.
 - **Bill Shelton**—That is what DHCD is waiting for, but it doesn't seem likely to happen. Any standard will probably be from a private sector group.
 - **T.K. Somanath**—Asked if there is a chance that there could be more defective drywall that has not yet been used by builders in houses in Virginia.
 - **Bill Shelton**—The alert has been raised on this issue and people are aware of it, but there could always be something new.
 - **Delegate Dance**—Asked whether the new funding for site revitalization is for specific areas.
 - **Bill Shelton**—It is statewide but targeted at distressed areas from a recommendation of the Distressed Communities Work Group from the Governor's Task Force. There are \$3 million dollars in appropriations.
 - **T.K. Somanath**—Asked what effect cutting the Housing Opportunities Made Equal (HOME) funding and the Community Development Block Grant (CDBG) funding has had on housing in Virginia.
 - **Bill Shelton**—The reduction was based on a formula. HOME was cut by 12%, but the cuts depend on the formula allocation.
- Participating in Critical Studies:
 - DHCD is implementing housing policy issues this year. Social services and housing homeless are some areas of focus.
 - *HJ 648 (Plum, 2001)* requests that DHCD study amendments to the Uniform Statewide Building Code that provide for accessible routes into public and

private buildings for persons with disabilities. It does not change accessibility standards, but retrofits accessible routes from parking areas into commercial and private properties. It is a two-year study, and there will be a report back to the General Assembly.

- **Susan Dewey; Director, VHDA**
 - These are challenging times for housing. VHDA is a major player in helping the state.
 - There are two key challenges: access to adequate capital—VHDA needs to borrow at rates it can lend—and addressing housing needs in a difficult market environment.
 - Typically, VHDA uses the tax-exempt bond market to support its lending programs. This works well with multi-family programs, but the same is not true with single family programs. This is because federal intervention has been keeping interest rates abnormally low, and VHDA cannot borrow at those rates. VHDA is currently using the Treasury Bond Purchase Program, but that expires in December and is unlikely to be renewed. VHDA is looking at alternate ways to raise capital through Ginnie Mae and Fannie Mae.
 - VHDA has provided \$201 million for 44 multi-family developments serving over 3,000 renter households. Some are small, four unit properties that serve persons with disabilities, and some are larger, serving over 1,000 persons.
 - VHDA is the allocating agency for the Federal Low-Income Housing Tax Credit program. There is a sufficient demand for the program, but there are challenges in the rural area where investor interest does not give VHDA the return that it needs to provide those credits.
 - VHDA is working on creating mixed income and mixed use developments with local communities as part of their revitalization plans. VHDA helps communities examine the options available to them as well as funding.
 - The biggest challenge VHDA faces is serving renters with extremely low incomes, particularly the homeless and ex-offenders. There is not enough property to serve the increasing numbers of extremely low-income households.
 - VHDA has the ability to provide assistance with down payments and closing costs. VHDA provided mortgage loans to almost 2,000 first-time homebuyers so far in 2011, which is a lower number than last year. VHDA limits risks associated with lending by requiring homebuyer education and using strong underwriting criteria. They also service all loans in house rather than selling them off, so they work directly with the homeowners. Lending has been a challenge with unemployment. They are still providing fixed, 30-year mortgages, but job loss makes it difficult to keep people in their homes.
 - Most of VHDA home loans are insured either by federal agencies, including the Federal Housing Administration (FHA), the Department of Veteran's Affairs (VA), and the Department of Agriculture Rural Housing Service (RHS), or private mortgage insurers. Delinquencies are higher than in the state and country, but the foreclosure rate is lower. This is because they do everything they can to intervene when a borrower becomes delinquent and make sure borrowers stay in their homes.

- The key to sustaining homeownership is the borrower's willingness to work with VHDA. They do everything they can to contact the borrower and send notification after 60 days of delinquency. Unfortunately, some borrowers wait too long before seeking assistance and the longer they have been delinquent, the more difficult they are to help.
- VHDA provides homebuyer education to anyone who is interested in obtaining a home; they hold about 14,000 classes online or in person throughout the year. VHDA also provides funding to foreclosure prevention counseling agencies.
- Some of the ways VHDA is supporting state housing policy priorities is through the incorporation of Universal Design features in new construction, and Green Building incentives in the Federal Low-Income Housing Tax Credit program. VHDA has also provided support to the Governor's Housing Policy Initiative through the development and maintenance of the Virginia Foreclosure Task Force website and by tracking foreclosure trends in Virginia. VHDA has organized monthly work sessions for the Task Force to review six to seven pieces of foreclosure-related legislation referred to it by the 2011 General Assembly. Terrie Suit chairs the Task Force and VHDA is staffing the Task Force.
- **Senator Whipple**—Asked if the securitization of alternative sources of home loan capital means that VHDA is selling its loans to Ginnie Mae and Fannie Mae.
- **Susan Dewey**—With Ginnie Mae, the loans are basically sold in order to obtain the insurance, but VHDA retains the servicing rights.
- **Senator Whipple**—Asked if Ginnie Mae sells the loans.
- **Susan Dewey**—They don't sell them because VHDA still does the servicing on the loans. It is just a way to obtain capital more efficiently.
- **Senator Whipple**—Asked how this is an advantageous arrangement to Ginnie Mae.
- **Susan Dewey**—Ginnie Mae gets a guaranteed fee.
- **Senator Whipple**—Asked how VHDA is dealing with the fact that sales prices in some areas are still diminishing, and if these borrowers end up underwater.
- **Susan Dewey**—That is a possibility for everyone right now, and VHDA is hoping that prices stabilize. Even though home prices are still dropping, VHDA typically sees buyers who are staying in the home for long periods of time.
- **Senator Whipple**—Asked if VHDA is still giving 100% loans.
- **Susan Dewey**—Responded that they are, and that most first-time homebuyers cannot save 20% for a down payment. VHDA has been running this program for most of its existence, and still do very well because they focus on education and underwriting.
- **Delegate Cosgrove**—Asked if there is private mortgage insurance (PMI) on the loans.
- **Susan Dewey**—There is no PMI on these loans.
- **Delegate Cosgrove**—Asked whether PMI could be included.
- **Susan Dewey**—Since these loans are FHA backed, it isn't necessary to include PMI.

- **Delegate Marshall**—Asked if VHDA tracks the foreclosure rate on those loans and how it compares to loans that are not 100%.
- **Susan Dewey**—VHDA does track, and the rate is slightly higher. They charge a quarter of a point higher to make up for those risks.
- **Delegate Marshall**—Asked how much higher the foreclosure rate is in comparison.
- **Susan Dewey**—Responded that she didn't have those numbers, but that the issue is related to the type of loan and whether the homeowner can stay in the home.
- **Delegate Marshall**—Asked how long VHDA has been giving 100% loans.
- **Susan Dewey**—For the last 30 years or so.
- **T.K. Somanath**—The Better Housing Coalition (BHC) has used a lot of your mortgage products.
- **Susan Dewey**—The key for success is counseling at all levels. Because of the counseling, VHDA's portfolio has barely had a default. The state needs first-time homebuyers in the market for housing recovery, but they will not be able to purchase a home unless there is a way to help them with down payments.
- **Senator Watkins**—Asked if VHDA ever goes back through the loan portfolio to assess whether values have changed, and if so whether VHDA classifies those loans that are in trouble.
- **Susan Dewey**—Responded that they are always looking at the portfolio, and they are required to have loan loss reserves.
- **Senator Watkins**—What is the ratio?
- **Susan Dewey**—It depends on the program. They use an intricate formula. About 92% of lending they have done is insured by a federal government program. They look at factors like multi-family, single family, what losses they think will be sustained, and come up with a percentage.
- **Senator Watkins**—Asked if they also look at credit scores or adjustments in credit scores.
- **Susan Dewey**—VHDA scores their portfolio twice a year.

III. Charlottesville Affordable Housing Program

- **Jim Tolbert**; *Director, Neighborhood Development Services*
 - Began with an overview of the housing situation in Charlottesville:
 - The city has a relatively high median income of \$73,800 as of 2007, and has weathered the economic downturn well.
 - There are 16,700 occupied housing units, and 18,400 total housing units as of 2007.
 - The 2025 City Council vision includes quality housing opportunities for all.
 - A 2007 American Community Survey showed that almost half of Charlottesville households spend more than 30% of income on housing costs. As of 2008, there were 268 homeless adults. In 2009, there were 1,933 units of supported affordable housing units, which is 10% of the total housing stock.

- A 1998 housing study found that the city needed to focus on middle-income housing, because they were losing middle-income homeowners to surrounding areas.
- The city's housing policy includes providing down payment assistance loans and assistance to homebuilders, as well as rehabilitating dilapidated properties in deteriorating neighborhoods.
- The Charlottesville Housing Affordability Program and the Tax Relief for Elderly and Disabled Program allow the city to help provide affordable housing. Additionally, the city has a tax abatement program for additions. To qualify, the unit must be at least 25 years old, have an assessed value of less than \$518,100, additions and renovations must add 15% in value, and the home must be owner-occupied. The abatement runs for seven years and is transferable.
- The city is rehabilitating aging housing stock through home improvements, including emergency repair, small rehabilitations, substantial rehabilitations, and handicap accessibility for the aging community
- The city has a free paint program, where every summer free paint is provided to qualified households earning less than 80% Area Median Income (AMI). In 2010 fourteen households received paint. The program helps to increase the appearance of the community.
- The city uses CDBG and HOME funding in its rehabilitation programs. The average amount received is \$577,775 from CDBG and \$122,000 from HOME.
- **Delegate Cosgrove**—Asked if the free paint program provides only the paint.
- **Jim Tolbert**—The program only provides the paint, but we have volunteers who help paint if the residents are unable to paint their own houses.
- The 2004 Housing Plan focuses on workforce housing and the commitment of local dollars to reduce reliance on CDBG and HOME dollars.
- The Charlottesville Housing Fund was created in 2007. The fund uses local general revenue and averages about \$1.4 million/year.
- City Council appropriated \$250,000 for energy efficiency and weatherization upgrades to low income households.
- The city also expanded bus routes and frequency, expanded sidewalks, and created bike lanes.
- Since 2005 there have been 910 housing units built or preserved. The majority of that number is units preserved, they are just starting to build new units.
- The city has partnered with Piedmont Housing Alliance, and was able to save properties and turn them into affordable rental units.
- As an incentive to developers, the city has reduced water and sewer connection fees by 80%. The requirements for this reduction are: the units must be sold or rented to families at or below 80% AMI, the sale price must be less than the VHDA maximum sale price, and units for rent must have federal, state, or local assistance that guarantees affordability. Another incentive was a 50% fee reduction stimulus package from Apr. to Oct. 2009 where the city reduced all permit fees for any residential new construction or addition that increased livable space by 50%.

- Charlottesville also has an expedited plan review (a partnership between the city and developers) that saves developers more money. Any project with 5% affordable housing is guaranteed a three-week review period. This partnership creates a great working relationship with homebuilders and encourages them to build affordable dwelling units.
- *HB 883 (Toscano, 2008)* authorizes Charlottesville to establish affordable housing, permitting certain densities in planning the city of Charlottesville. The legislation also allows the developer to provide on-site affordable dwelling units, off-site affordable dwelling units, or a cash contribution to the city's affordable housing fund instead of providing affordable dwelling units.
- The city adopted the goal last year of increasing the ratio of affordable dwelling units to 15% of total housing units by 2025 for a total of 2,350 units. To achieve this goal by 2025, they city will need a commitment of \$25.7 million in local funds.
- The Thomas Jefferson Community Land Trust is the first community land trust in Virginia. It removes land costs from housing prices, which helps to provide affordable housing. The trust holds the land in perpetuity, which makes housing permanently affordable.
- The Housing Advisory Committee recommends housing policy and priorities to City Council and is made up of members from a variety of industries in the public and private sectors.
- Every city employee may take two days of paid leave to volunteer with Habitat for Humanity to build two housing units. Charlottesville has strong partnerships with non-profits, including the Albemarle Housing Improvement Program, Habitat for Humanity, and the Piedmont Housing Alliance.
- Current city housing projects include EcoMOD houses (0 energy home), and EcoREMOD houses, which are historic homes rehabilitated to high energy efficiency standards.
- **Delegate Cosgrove**—Asked who pays for the 80% reduction in water and sewer connection fees?
- **Jim Tolbert**—The cost is built into the housing fund.
- **Delegate Cosgrove**—Asked about the percentage of developers who choose to pay the city rather than agreeing to provide a certain number of affordable dwelling units.
- **Jim Tolbert**—Of the five plans the city has reviewed, four of them have chosen to pay the city and one is providing the units.
- **Delegate Cosgrove**—Pointed out that taxpayers bear the cost of the two days of paid vacation time.
- **T.K. Somanath**—Asked whether the \$1.4 million for the housing fund is a dedicated source or if it is provided as needed.
- **Jim Tolbert**—It is not a dedicated source.

IV. Mortgage Market Overview

- **Sonya Waddell**; *Associate Regional Economist, Federal Reserve Bank of Richmond*

- The data in this presentation is from the Mortgage Bankers Association (MBA) and Lender Processing Services (LPS).
- The housing situation is not getting worse, but it is still challenging. There are declines in delinquency rates, but there are also declines in housing rates. Foreclosures are at an all time high, and existing home sales are not where they need to be for the housing market to recover.
- The foreclosure rate in the 4th quarter of 2010 was 2%. There are 30,000 loans currently in the foreclosure process. Virginia continues to do better than the rest of the nation; the national foreclosure rate was 4.6% in the 4th quarter of 2010. Part of the reason for the high U.S. foreclosure rate is because of states like Florida, which has over 450,000 loans in the foreclosure process. Virginia ranks 44th out of the 50 states and the District of Columbia.
- In the 4th quarter of 2010 .9% of loans in Virginia were going into foreclosure, which is equivalent to about 12,500 loans. The U.S. rate was 1.3%. Prime, FHA, and VA loans have seen a flattening out of the foreclosure rate, while subprime foreclosures have jumped. In the 1st quarter of 2007 the majority of loans in foreclosure were subprime loans, which accounted for about 3,200 loans. In the 4th quarter of 2010 the majority of loans in foreclosure were prime loans, but the total number of loans in foreclosure was much higher; subprime loans accounted for about 8,000 loans. Subprime loans are still disproportionately represented in the foreclosure pool in Virginia.
- The percentage of owner-occupied homes in foreclosure is highest in northern Virginia. This is a considerable improvement, but still high rates of foreclosure.
- The percentage of owner-occupied homes with subprime mortgages is dropping, but now there are higher shares of subprime foreclosures in the southern parts of the state.
- There has been a decline in 90+ day delinquencies (currently 2.7%, or about 3000 homes) and a flattening out of 60+ day delinquencies. There are more 90+ day delinquencies in the central to eastern parts of the state. The numbers are not getting worse, and appear to have stabilized.
- The decline in house prices will continue to be a problem. As house prices decline negative equity is created and people choose to walk away from their homes. The bigger issue is with people who have big event that causes them to get behind on their mortgage, like job loss, divorce, etc. Virginia is one of the top 10 states with negative equity at 23.4%, but that does not necessarily mean that there will be large jumps in house prices. House prices in Virginia rose at a faster rate than the U.S., but the decline has been the same for both.
- Existing home sales are not rebounding quickly enough to move inventory off the market. The good news is that labor markets are improving, which means improved conditions for homeowners. Unemployment in March was 6.3%. As labor markets improve, housing markets improve, but the southern part of Virginia continues to see higher unemployment rates than the rest of the state.
- The bottom line is that the housing market is still a drag on the economy. House prices are still falling and foreclosure inventories are still at record levels. However, the foreclosure inventory and the number of foreclosure

starts are leveling off, and delinquency rates are falling and unemployment levels are stabilizing.

- **Melanie Thompson**—Confirmed with Ms. Waddell that her sources are LPS and MBA.
- **Delegate Marshall**—Asked Sonya to email the presentation to the staff.
- **Senator Watkins**—Asked whether Florida is a judicial foreclosure state.
- **Sonya Waddell**—It is a judicial foreclosure state.
- **Senator Watkins**—Asked what the average time requirement is for foreclosure in Florida.
- **Sonya Waddell**—The Virginia foreclosure process takes less than Florida but she did not know the exact numbers.
- **Senator Watkins**—Asked whether the data takes home equity lines of credit (HELOC) that are compiled with the first deed of trust into consideration.
- **Sonya Waddell**—The LPS data does not. She did not think the MBA data does either.
- **Senator Watkins**—Asked if the Federal Reserve tracks home equity lines of credit.
- **Sonya Waddell**—They do keep track of that data.
- **Senator Watkins**—Expressed his concern regarding the number of people who have a first deed of trust that is underwater and have subsequently obtained a HELOC loan. He explained that when there is one piece of property with two deeds of trust against it, the foreclosure problem is only increased, and that some of the larger banks are already categorically reducing lines of credit on those loans. He asked about the magnitude of the problem in Virginia.
- **Sonya Waddell**—Banks have indeed started to eliminate those lines of credit. She did not know the exact numbers, but assured Sen. Watkins she would look into the number of homes that have a first line of credit and a lien.

V. Brief Homebuilders Overview

- **Lloyd Poe; HBAV Executive Board**
 - Mr. Poe is a homebuilder and resident in Chesterfield County
 - Although the economy is improving, homebuilding is not, primarily because of the crossing of four issues: foreclosure, lack of job growth, financing problems, and equity loss.
 - Although the foreclosure problem is not as bad as in other states, Virginia still has its share of the problem. There is a problem not just with determining resale value on foreclosed property, but also on surrounding homes. New comps for neighborhoods have dropped by \$10,000-\$11,000 because appraisers are having trouble not including foreclosed homes in valuation. New builders are competing with banks selling foreclosed inventory, and last year banks outsold new builders for the first time. Builders cannot compete in terms of price; the cost of a new home is at or beyond the resale of foreclosures. A builder holding inventory purchased at the height of the market is doing well to break even. There is no profit or contribution overhead for those builders, they are only

moving debt off the books. The earliest the inventory will clear out is 2014 or 2016.

- The housing demand is driven by job growth, which is stagnant in Virginia. The economy needs to improve in order for the housing situation to improve.
- Buyers are having difficulty obtaining financing. New builders often go to the closing table and end give up more than intended under the initial contract, because buyers were unable to obtain a loan for the original amount. Virginia is still not at the bottom of the housing value curve. House prices have returned to normal, and the house price-to-income ratio has returned to the normative figure of 3.3 in Virginia (2.2 elsewhere) from its peak of 4.74 in 2005. Acquisition, Development, and Construction (ADC) financing is essentially a thing of the past. The falling value of lots is what placed a substantial number of homes underwater, and it is unlikely that financing will ease up for the building community.
- Many borrowers have underwater mortgages due to equity loss. The home equity loan issue has not hit yet. Other issues that have not come to the surface yet are problems with “robo-signing” and title insurance, where the title on foreclosed homes may not be clear, which only delays moving that inventory off the market. The average sales price for homes in Central Virginia was \$275,000 in 2006, and was \$198,000 in March of 2011, which is a 38% value loss. Before house prices level off they may still increase to a 40% loss.
- There are 254,000 housing starts on new construction nationally this year. Demand is growing, but builders have no ability to build homes at a profitable price. Each improvement is met with increasing costs, such as drywall and lumber.
- The remodeling industry is doing better than new homebuilding, and the industry is facing competition from homebuilders who are now going into remodeling.
- The road back to normalcy will be a long one. By the 4th quarter of 2011, Virginia was 62%-68% back to normal housing production levels. There won't be much improvement over that until Spring 2013.
- **Delegate Cosgrove**—Acknowledged that optimism among homebuilders is there, but guarded.
- **Senator Watkins**—Expressed concern about the foreclosure problem leaving families without a place to live. He asked if Mr. Poe had noticed the marketplace for lower cost housing, and whether homebuilders might be able to fulfill that need.
- **Lloyd Poe**—In the Richmond market, the issue with low priced housing is that there is none, with the exception of those built with government assistance. With the current costs to build a new home, he cannot produce a \$150,000 home without government assistance. The buyer will have to buy resale housing to get that price, and that doesn't help homebuilders.
- **Senator Watkins**—Acknowledged that is the case with single family homes, but pointed out that there is a deficiency in the availability of new multi-family units.

- **Lloyd Poe**—Although multi-family typically fills the need for a product under \$150,000, they are difficult to build in Richmond with current zoning requirements and other conditions.
- **Senator Watkins**—Told the Commission that he thinks Lloyd has given them a lead and they need to be looking at the cumulative effects of current zoning requirements that local governments have in place. He recognized how the profit system works, but at some point in time that becomes part of the problem and we may have reached that point. He suggested the Commission examine the model and its effect on the ability of individuals to purchase affordable housing. He explained that very time a house is foreclosed on, a family is without a place to live, and they need to find a way to provide more affordable housing for those families.
- **T.K. Somanath**—The City of Charlottesville provides incentives and assistance from the city. He asked Lloyd if any localities in the Richmond area have those types of incentives.
- **Lloyd Poe**—Most of the counties here don't promote housing in terms of producing affordable quality housing without government assistance. There are no policies in place to do that around Richmond. There are things that could be done that aren't being done. The Richmond market is different from other major cities of its size in that it is deficient in housing. The problem needs to be solved, but it will require working with municipalities on regulatory issues and zoning. Lloyd told the Commission that he owns two building companies and they are closing 80 houses. The sales are being made and people are moving into homes, there just isn't any profit for the builders.

VI. Public Comment

- **Delegate Cosgrove**—Asked if there were any comments from the public. After receiving no response, he asked if there were any comments from the Commission.
- **Senator Whipple**—Explained to the Commission that she had received an email from a constituent yesterday asking for assistance with the Foreclosure Task Force in the Homeowner's Association context. The constituent is having issues with a condominium unit in foreclosure. The bank is preventing them from going forward by paying the county fees, and is not paying fees to the Homeowner's Association. She requested the Commission give more attention where there are individual foreclosures within a property. Community homeowners need a seat at the table and need to be included in legislative proposals. She asked the Commission if there is a way to address all the issues involved in this situation.
- **Delegate Cosgrove**—Suggested Sen. Whipple address that issue at next week's Common Interest Communities meeting.
- **Susan Dewey**—Informed the Commission that the same issue had come up at the last Foreclosure Task Force meeting. As a Task Force member, she told Sen. Whipple she will attempt to schedule that issue on the agenda for the next Task Force meeting.
- **Senator Watkins**—Requested the Commission give some consideration to the assembly of people willing to talk about the exclusivity of zoning that has precluded localities in the Greater Richmond area from remaining in the marketplace for

affordable housing. He suggested that there must be a logical approach that will provide the kind of relief necessary to provide new affordable housing units. Some jurisdictions impose same cash on a two bedroom apartment as on a two bedroom house.

- **Delegate Cosgrove**—Agreed that the importance of zoning capabilities needs to be addressed. He acknowledged that there are many people hurting from foreclosures, job loss, and the economy, and are left without homes. He suggested the issue be taken up by the Affordability, Real Estate Law, and Mortgages Work Group. He asked staff to forward the request to Delegate Oder as the chair of that work group.
- **T.K. Somanath**—Suggested the Commission consider a community land trust where the builder holds the land and then sell the houses. There are some models that are successful, and there are municipalities, including Richmond, that would like authorization from The General Assembly to create a land trust.

VII. Adjourn

- The meeting was adjourned at 12:14 PM.

COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair
SENATOR MAMIE LOCKE, Vice Chair
ELIZABETH A. PALEN, Executive Director



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VIRGINIA HOUSING COMMISSION

AGENDA

Virginia Housing Commission House Room C, General Assembly Building September 6, 2011 1:00 P.M.

Members present: Delegate John Cosgrove, Delegate David Bulova, Delegate Rosalyn Dance, Delegate Daniel Marshall, Senator Mamie Locke, Senator John Watkins, Senator Mary Margaret Whipple, T.K. Somanath, and Mark Flynn

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate John Cosgrove, Chair**
 - The meeting was called to order at 1:05 p.m.
 - **Delegate Cosgrove** began the meeting by acknowledging Frank Eck's recent passing, and expressing his condolences on behalf of the Commission. Frank Eck worked extensively with the Commission on housing issues, and he will be sorely missed by Commission members.

II. The Virginia Tobacco Indemnification and Community Revitalization Commission and Energy Efficient Affordable Housing (25 mins.)

- **Dr. Phil Parrish**, Associate Vice President for Research at the University of Virginia, introduced himself and his colleagues, professors Anselmo Canfora and John Quale from the University of Virginia School of Architecture. Dr. Parrish began the presentation with an overview of the Partnership for Design and Manufacture of Affordable, Energy Efficient Housing Systems.
 - The Partnership is between UVA (Project ecoMOD and Project reCOVER), Cardinal Homes, People Inc., SIPS of America, the Southern Virginia Higher Education Center, Riverstone Energy Center/American Wood Finishing Institute, the Southside Outreach Group, and the Tobacco Indemnification and Community Revitalization Commission. The focus of the partnership is providing affordable, energy efficient housing systems. The homes include disaster recovery shelters as well as permanent homes. The goal is to develop a robust housing industry in southside Virginia, and improve economic development and create 30–40 jobs in that part of the state over a three-year period.

DELEGATE DAVID L. BULOVA
DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR MARY MARGARET WHIPPLE

MARK K. FLYNN
T.K. SOMANATH
MELANIE S. THOMPSON

- The concept of affordability embraces costs for the acquisition of the home as well as during the life of the occupancy. There are energy saving features intended to help with maintenance on the home. The project involves specialty products, and will evolve into a project that will address specialty windows and skylights, specialty wood products, advanced control systems for heating and cooling units, alternative energy systems, energy efficient lighting, and sustainable flooring materials.
- The partnership has chosen to focus on two different market thrusts (disaster recovery systems and affordable permanent systems), and the commonalities are the materials and methods of construction. Disaster recovery systems provide a shelter alternative to tents and other temporary structures. The transitional disaster recovery housing system design is the same design as the Project reCOVER Breathe House, which won first place in an international design competition involving 400 design teams. The design was developed for use in disaster recovery in Haiti, and special design attributes contribute to a healthy living environment.
- Project ecoMOD is continuing to be developed, and multifamily units are now being designed for the partnership project. There will be one unit built in both South Boston and in Abingdon. These two locations are microclimates and the houses will be monitored for energy efficiency to help understand the houses' performance in this type of atmosphere. The houses will use SIPS panels manufactured by SIPS of America and modules constructed by Cardinal Homes.
- The partnership project is highly integrated, and each partner has a different role.
 - SIPS of America is working toward in-house development of capability for automated, computer-aided production. Currently, all production is done by hand. To be more competitive, computer-aided production is necessary. There is a plan to purchase a piece of automated equipment which will improve the quality of materials and create jobs at SIPS for the design and manufacture of these computer systems.
 - Cardinal Homes is upgrading their ability to incorporate SIPS panels into construction.
 - The Southern Virginia Higher Education Center is providing major support to SIPS in manufacturing automation and helping with design manufacture for key components of the Breathe House. The center is also assisting with the instrumentation of ecoMOD for the ongoing measurement of energy use once the occupants are living in the house. There will be a wireless system in place that will provide data back to UVA for evaluation of the houses' performance over time.
 - Riverstone Energy Center is primarily focused on coatings for materials used in the houses, because they are subject to fire, pests, moisture, and solar exposure. The goal is to find ways for the houses to stand up to weather and other threats.

- Southside Outreach is a demonstration vehicle for the ecoMOD house in South Boston, and People Inc provides the same role in Abingdon.
- **Anselmo Canfora**, an Assistant Professor of Architecture at UVA, explained Project reCOVER.
 - As Dr. Parrish mentioned, one of the central projects being developed with the Commission grant is the Breathe House, which is the transitional disaster recovery housing system. The design was submitted to an international design competition for disaster recovery housing in Haiti. It was primarily focused on a community near Port-au-Prince of residents who are unfortunately afflicted with HIV/AIDS, and the project has a very specific health component. One of the reasons the project uses SIPS panels and other environmentally friendly materials is to support a healthy environment.
 - Initiative reCOVER was a research project initiated at the School of Architecture in 2007 that focuses on disaster recovery housing and works internationally with non-profit organizations, government agencies, and private entities to address projects that have a social good. Project reCover has four basic objectives.
 - The first objective is for Virginia to take the leading role in revolutionizing disaster recovery housing, and look at design and engineering problems anew to improve on what is currently available in the market.
 - Secondly, the project will specifically address the current mediocre temporary housing solutions in the form of UN tents and FEMA trailers, and the various health hazards associated with these types of housing. Initially these types of housing are presented as temporary solutions, but ultimately become permanent.
 - The third objective is to rethink manufacturing and deployment strategies and design for sustainable reuse. The reCOVER system is entirely based on a strategy of recycling and reusing. The design for the Breathe House is based on a panelized system that is remountable, and can be taken down, repacked, repaired if necessary, and put back together.
 - Finally, the initiative seeks to reconnect victims of disasters to their communities through a process of occupant-centered rebuilding.
- **John Quale**, an Associate Professor of Architecture at UVA, explained projects ecoMOD and ecoREMOD.
 - The objective of the two projects is to create sustainable housing units for affordable housing organizations—ecoMOD focuses on new construction and ecoREMOD rehabilitates existing properties. Projects ecoMOD and ecoREMOD are both educational projects and research projects with commercial opportunities associated with each. Between the two projects, nine housing units have been completed—seven in the Charlottesville area, one in Mississippi, and one in Jamaica. Future projects include four new

townhome housing units in South Boston and Abingdon, Virginia, and new construction and renovation projects in Charlottesville.

- Housing units built or remodeled for the projects focus on sustainability and affordability. The houses use local and regional materials and are built to LEED and Passive House standards. Once built or renovated, the houses are monitored and evaluated to assess climate response and environmental impact.
- **Dr. Phil Parrish** expressed his gratitude to the Virginia Tobacco Indemnification and Revitalization Commission for its generous financial support to the Partnership.
- **Delegate Marshall** mentioned that as a member of the Virginia Tobacco Indemnification and Revitalization Commission who sits on the Research and Development Committee, he felt the Partnership is succeeding in its effort to create jobs in the southern and southwestern areas of Virginia.
- **Mark Flynn** inquired about the cost and size of the disaster recovery housing systems.
 - **Anselmo Canfora** responded that the base unit is roughly 525 square feet, and the production costs are approximately \$45–\$55 per square foot. He noted that this cost is very competitive, and roughly equal to the cost of producing trailers and other forms of transitional housing currently available.
- **Mark Flynn** asked whether the end result is intended to be a permanent home.
 - **Anselmo Canfora** answered that in certain instances they do become permanent homes, such as the Breathe House—the occupants are transitional. The prototype being developed with Cardinal Homes however is a de-mountable, re-packable system that can be flat-packed again and stored. This allows for some flexibility to meet the demand on various types of housing.
- **Delegate Cosgrove** asked how these homes differ from the houses built by Make it Right in New Orleans following Hurricane Katrina.
 - **John Quale** replied that the housing systems are similar, but Make it Right emphasized architectural designs, and some were somewhat unrealistic and less pragmatic for the community. In terms of cost, the houses being developed by the Partnership are less expensive to produce.
- **Delegate Cosgrove** asked how localities are responding to these housing systems and inquired about compliance with local ordinances.
 - **John Quale** responded that they have appeared before historic boards several times throughout the process, and they attend community meetings. He mentioned that during these meetings they have received negative feedback regarding the floor plans of the houses, but partners have had no difficulty selling the units or moving families into them. In fact, they have been slightly more successful than comparable units.
- **Delegate Cosgrove** inquired about potential jobs.
 - **Delegate Marshall** responded that during the first period of the project the Commission had projected that 30 jobs will be created.
 - **Dr. Phil Parrish** added that building disaster recovery housing systems could create even more jobs. SIPS and Cardinal Homes are unable to

address the demand alone, nor would they necessarily obtain a contract to build the homes. He explained they are currently attempting to find a broader network of builders within southern and southwestern Virginia. They are trying to make the hub in southern Virginia.

- **Delegate Cosgrove** asked if there was any formaldehyde used in the houses or in the building process.
 - **John Quale** responded that there is absolutely no formaldehyde involved in any part of the process.
- **Delegate Cosgrove** acknowledged that the Partnership is providing an incredible opportunity for both the people who benefit from these houses and southern and southwestern communities in Virginia.

III. Potential Impacts of Consumer Financial Protection Bureau on Mortgage Loan Originators in Virginia (15 mins.)

- **Joe Face**; Commissioner of Financial Institutions, Virginia State Corporation Commission
 - The Nationwide Mortgage Licensing System (NMLS) was initiated by state regulators in 2004 in response to the rise in mortgage loan originators (MLOs). The Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act, which became effective in 2009, mandated that MLOs meet minimum licensing requirements. States were required to enact legislation that brought MLOs into compliance with the SAFE Act by December 31, 2010.
 - As of July 2011, the SCC has received 9,257 MLO license applications. Of those 5,989 are now registered and licensed by the SCC through NMLS. Over 700 existing mortgage-licensed companies have now transitioned onto NMLS as well. All states are now part of, and are using, NMLS. Nationwide, there are more than 362,000 licensed MLOs registered through NMLS. In January 2011, MLOs were required to register with NMLS by July 29, 2011.
 - The goals of NMLS include improving the system's functionality, its operations and services, and to expand the system to include other non-depository institutions.
 - The Consumer Financial Protection Bureau (CFPB) was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act as an independent entity led by a director appointed by the President and confirmed by the Senate. CFPB has the authority to promulgate regulations and rules, and has the authority to examine and enforce regulations for banks and credit unions with over \$10 billion in assets, all mortgage-related businesses, and non-backed financial firms. CFPB was initially housed in the Department of Treasury, and was transitioned into an independent agency. It is anticipated that CFPB will employ upwards of 1,300 employees, and currently has over 200 employees. CFPB is funded from the Federal Reserve and will receive \$230 million annually and may request an additional \$200 million from Congress.
 - State regulators have calculated that CFPB will be required to issue at least 243 rules and must conduct at least 67 studies over the next couple of years,

and there will be at least 123 rulemakings that will affect regulations regulated by state regulators.

- Under Dodd-Frank, state regulators can bring actions against state-regulated licensed entities for violations of any rules or regulations promulgated by CFPB. This will likely require changes to Virginia law, but because these rules and regulations have yet to be written, there is no way to know at this point which laws this will affect. There are multiple provisions in Dodd-Frank that require the CFPB to coordinate, consult, and share information with state regulators. Many states have entered into memorandums of understanding with CFPB to promote and coordinate this sharing of information. The SCC is currently working on such a memorandum with CFPB.
- The CFPB now has oversight of the SAFE Act. CFPB is also the regulator of NMLS and assumed responsibility for the contract between NMLS and federal banking agencies for federal MLOs.
- At this point, most experts agree that there is uncertainty as to what CFPB may or may not do with its broad powers. However, CFPB has informed the SCC that it does not expect to exercise its authority to determine that a state does not have a system in place for licensing MLOs that complies with the SAFE Act until at least December 31, 2012. Fortunately CFPB did recognize that with the new Housing and Urban Development (HUD) ruling that was issued over the summer, many states needed additional time to bring state laws into compliance with the SAFE Act. This ruling sets forth the minimum rules and standards with which state-licensed MLOs need to comply. The SCC is currently reviewing the HUD ruling and will be advising the General Assembly as to whether amendments to current legislation will be required.
- **Senator Watkins** asked whether an agency head has been appointed to the CFPB yet.
 - **Joe Face** responded that the President has nominated a candidate, but has not yet been confirmed by the Senate.
- **Senator Watkins** inquired whether the NMLS would move out of control of the state regulators.
 - **Joe Face** replied that has not happened yet. Control of NMLS still rests with state regulators, but the regulator of NMLS is now the CFPB. There has been discussion in the CFPB about NMLS incorporating the licensing of other non-depository institutions. If this happens the CFPB may take over NMLS, but there has also been discussion that CFPB may design its own database to house non-depository institutions; there are a lot of options being discussed at this point and nothing is certain.
- **Senator Watkins** noted that the General Assembly enacted legislation to comply with all rulings and regulations issued by HUD, and now that MLOs are overseen by a different entity, all those rules and regulations could be completely changed.

- **Joe Face** acknowledged that is a possibility. The HUD ruling that was issued over the summer has already identified potential issues, including what constitutes a mortgage loan originator. The HUD rule seems to indicate that if someone is only passively engaged in mortgage loan originating they may not need to be licensed, whereas before if someone issued one loan they needed to be licensed. This is one example of the issues the SCC is currently examining.

IV. Foreclosure on Lien for Unpaid Assessments (10 mins.)

- Delegate James Scott
 - **Delegate Cosgrove** explained that Delegate Marshall recommended this issue be taken up at the next Commission meeting in November.

V. Municipal Water Services (15 mins.)

- **L. Preston Bryant, Jr.**, with McGuire Woods Consulting, explained that he represented Virginia Water and Waste Authorities Association, and that they had been working extensively with Virginia Municipal League (VML), Virginia Association of Counties (VACO), realtors, and property owners.
 - The issue is not a new one; there has been a recurring problem with Water and Sewer Authorities' ability to collect past due water and sewer fees from tenants. This has resulted in the authority of Water and Sewer Authorities to put a lien on the property. There has been concern regarding the ability of authorities to place a lien on an owner's property for past due fees owed by the tenant. Additionally, there have been problems with enforcing these liens in a uniform manner. This is largely due to two conflicting sections of the Virginia Code: §§ 15.2-2119 and 15.2-5139. Property owners and local governments tend to rely on the Code section most beneficial to their situation, and this has resulted in confusion.
 - Stakeholders have been attempting to align the Code sections and in the process develop a protocol for placing a lien on property that is agreeable to all interested parties. The draft presented today is not final, but it shows the direction stakeholders are moving toward. It includes notice and process provisions to ensure a uniform collection effort. Liens are intended to be a last resort. Mr. Bryant and stakeholders hope to have developed a final draft by the Commission meeting in November.
- **Mark K. Flynn**, with VML, explained that there currently are not many requirements that must be met before a city, county, or town may place a lien on property. A judgment in district court is required, but the problem is that court costs exceed the past due fees in many cases. The solution to this has been to develop a process with additional requirements placed on the locality or water authority to advise the owner of the real estate prior to a tenancy that this lien provision exists to ensure that the landlord is informed ahead of time. Additionally, the amount of the lien cannot exceed three months, so the probability of a landlord facing a \$1,000 lien for water and sewer fees is less likely to occur. The locality

must also send notice to the landlord that the tenant owes past due water and sewer fees prior to placing a lien on the property. The draft also provides for the use of the Set Off Debt Collection Program if the locality is a participant. Also, the draft includes a provision that allows a locality to obtain a security deposit under certain circumstances. While this provision protects the landlord, there are concerns regarding the logistics of localities collecting the deposits and the ability of the tenant to provide what would be a second deposit after the rental deposit. These are all concerns stakeholders are addressing. The biggest achievement is that this draft aligns the two conflicting Code sections.

- **Chip Dicks**, with FutureLaw, explained that the landlord community would like to ensure that no landlord is responsible for the bills of a delinquent tenant. However, the credit rating of water and sewer bonds is based, in part, on the ability of localities and authorities to place a lien on property for unpaid fees. This draft has taken steps in the right direction, but the landlord community still has concerns.
 - There are requirements that must be met prior to a locality's or authority's ability to place a lien on a landlord's property, including taking a security deposit in the amount that would equal a lien. For three months of water and sewer bills, plus interest and penalties, the amount would equal roughly \$150.00. This eliminates the need to put a lien on landlords' properties.
 - Another issue is that often times a tenant is able to turn on the water and sewer services without any proof of authority that the landlord has authorized the tenant to open an account. The solution has been to develop a process that localities and authorities must follow. Authorities will know exactly what process must be followed before they are allowed to place a lien on the landlord's property.
 - Finally, before a lien may be placed on property, there must be a 30-day notice to the landlord notifying him that authorities are unable to obtain the past due fees from the tenant. This would allow a landlord to prevent the locality or authority from placing a lien on his property by paying the fees, and then he may pursue collection from the tenant.
 - The real challenge is that it is not cost-effective for localities and authorities to go to court to obtain past due fees, and landlords do not want to be responsible for a tenant's bills. This draft is still very much a work in progress.
- **Senator Watkins** asked Mr. Dicks whether localities comingle the capital and daily usage in one bill. Usually the capital is required up front with the connection fee in development and that cleans it off the system, but it sounded like from what Mr. Flynn said there's a potential for localities to put in the capital side with the monthly fee as well.
 - **Chip Dicks** responded that if a locality installs \$20 million in water and sewer lines, when underwriting, rating agencies take into consideration the capital outlay, but the revenue stream is deemed to be reliable, in part, because of the locality's ability to place a lien on the property for past due fees.

- **Senator Watkins** explained that he was under the impression that lien authority existed only so long as the connection fee is withheld. Did that slide over into the operational side?
 - **Mark Flynn** replied that yes, a tenant with a monthly bill is still subject to the locality's lien authority.
- **Senator Watkins** asked Mr. Flynn how many jurisdictions depend on monthly usage fees, or some part, to pay for capital equity costs.
 - **Mark Flynn** responded that he is unsure of the actual number, but when he worked for the City of Winchester that was standard practice; it's not unusual.
- **Delegate Cosgrove** asked Brian Gordon, from the Apartment and Office Building Association (AOBA), how apartment complex management might be affected by this bill cost-wise.
 - **Brian Gordon** answered that he was unsure of what the total cost might be. He explained that he has not yet had an opportunity for feedback from AOBA's members regarding this bill draft. The costs are substantial, particularly in the commercial context, and he expressed amenability to a provision capping the charges a landlord would be responsible for at three months worth of fees.
- **Delegate Cosgrove** inquired how soon a landlord is required to return a security deposit to the tenant after the tenant vacates the premises.
 - **Chip Dicks** responded that under the Virginia Residential Landlord Tenant Act (VRLTA) a landlord must return the deposit within 45 days. Two sessions ago the General Assembly enacted legislation enabling a landlord to withhold part of a security deposit of water and sewer bills had not been paid and the tenant had not provided proof of payment of water and sewer bills.
- **Delegate Cosgrove** asked whether the landlord would be given notification of nonpayment of water and sewer bills within that 45 day time frame under this proposed legislation.
 - **Chip Dicks** replied that currently there are localities and authorities that are placing liens on landlords' properties with no notice whatsoever. The direction this bill is taking is not a perfect solution, but it improves on current practices.
 - **Mark Flynn** responded that the vast majority of those affected by this bill will be single-family and duplex residences. This proposed legislation requires the locality notify the owner when the final water bill is sent to the tenant, which provides the owner with notice before the security deposit must be returned.
- **Delegate Marshall** inquired with regard to the Set Off Debt Collection Program, whether a tenant's tax refund would be sent to the locality for overdue water and sewer fees.
 - **Mark Flynn** replied that the draft provides that a lien may be placed on the property only if the same collection efforts are made to collect amounts due as are made with respect to the property owner as well. He

indicated he would like the participation of the locality in the Set Off Debt Collection Program to be mandatory.

- **Delegate Marshall** noted that if the landlord makes no effort to collect the amounts due from the tenant, then the locality can use the Set Off Debt Collection Program to obtain the amount owed. He indicated this provides the landlord with incentive to allow the bills to go unpaid.
 - **Mark Flynn** explained that the consequence of allowing the bills to go unpaid would be that the locality or authority puts a lien on the landlord's property, so if the landlord wants to avoid the lien, he must either pay the bill or collect that amount from the tenant.
- **T.K. Somanath** asked Mr. Flynn whether the proposed legislation would also apply to gas provided by the localities. He pointed out that some localities include gas, water, and sewer in the same bill.
 - **Mark Flynn** answered that the section of the Virginia Code being amended applies only to water and sewer.
- **T.K. Somanath** inquired whether that meant that localities will need to change billing practices.
 - **Mark Flynn** responded that that is a possibility.

VI. Update from the Neighborhood Transitions and Residential Land Use Work Group (20 mins.)

- **Delegate Rosalyn Dance**
 - The Affordability, Real Estate Law, and Mortgages Work Group met in a joint meeting with the Neighborhood Transitions and Residential Land Use Work Group earlier in the day.
 - The work group discussed proposals from the Virginia Poverty Law Center involving landlord-tenant issues. Of the three proposals, none are ready to be presented to the full Commission yet.
 - The work group also discussed proposed legislation regarding derelict buildings, and that proposal will be presented at this meeting by Jon Baliles, from Planning and Development Review in Richmond will present the issue now.
- **Jon Baliles** began by providing background information on the receivership proposal.
 - The proposal began as SB 1312 (McEachin, 2011), and has been significantly changed since that bill was introduced last session. Chip Dicks and Mark Flynn worked extensively with the city of Richmond on this issue. The bill was based on a process known as receivership whereby a locality can appoint a receiver to repair a vacant, derelict home and then sell the home to recoup the costs of the work done and any amount leftover from the sale would be given to the original owner of the home. This process involves a taking power by the locality. That power has been removed from this proposal.
 - The bill is an effort to breathe new life into declining neighborhoods by repairing homes that are currently beyond acceptable living conditions. In the city of Richmond, there are roughly 500 vacant properties that are

falling apart and rampant with criminal activity. This proposed legislation has been drafted to focus on those properties; houses like this rob the neighborhood of vitality and decrease the property value on surrounding homes. Vacant properties have been shown to attract crime, and the longer those properties are blighted the worse the situation becomes. Current enforcement tools cannot compel evasive or insolvent owners to rehabilitate their property, and government initiatives—tax sales and Spot Blight Abatement—are inefficient.

- This proposed legislation sets out specific guidelines to be followed using existing law. The property must first be declared derelict, then the locality proceeds to Spot Blight Abatement. Receivership would only be allowed after the property is declared derelict and Spot Blight Abatement has taken place, then the localities, through the courts, can repair the property. The goal of receivership is to incentivize owners to restore their property to a livable condition rather than just boarding it up and allowing it to fall apart. The owner retains title to the property until the Spot Blight Abatement proceeding is completed. The owner can negotiate a sale of the property at any time, including after Spot Blight Abatement and during the receivership process.
- **Mark Flynn** emphasized that if the receivership process has been invoked, then Spot Blight Abatement has already been initiated and the house will be condemned. More often than not, there are tax liens against the property, and frequently other liens as well. Under Spot Blight Abatement, the original owner's house is taken and condemned, and the owner gets nothing. Under receivership, the owner would receive any net proceeds after the receiver's lien and any other liens on the property have been paid, which is a far better end result for the owner. Receivership will not be a useful tool for every property.
- **Jon Baliles** acknowledged that although receivership is not a useful tool for every property, it will be beneficial to neighborhoods in decline where more houses are becoming increasingly run-down. Receivership is also a useful tool in bad neighborhoods.
- **Delegate Marshall** inquired how houses are identified for the receivership process.
 - **Jon Baliles** replied that the locality must file a Spot Blight proceeding. Then a court will have to approve the receivership process.
- **Delegate Marshall** asked whether the houses had to be sold after receivership or if they can be rented.
 - **Jon Baliles** answered that that decision is made by the owner. The owner can sell it before the work begins, during, or after, or he can pay the lien on the property for the work done and retain ownership.
- **Delegate Marshall** asked who performs the renovations on the house.
 - **Jon Baliles** responded that the locality would fund the renovations. A contractor would be selected from the locality's pre-approved list of reputable contractors or organizations. The locality would give the contractor the money to make the necessary repairs and put a lien on the property in that amount.

- **Delegate Marshall** asked whether a developer could identify houses that needed to be repaired and petition the locality to initiate the receivership process.
 - **Jon Baliles** replied that a locality must initiate Spot Bate Abatement proceedings and then a court will decide if receivership is appropriate for that property. The court will make the decision as to who repairs the property after reviewing and approving a plan for repair.
- **Delegate Cosgrove** asked Chip Dicks to address the Commission.
- **Chip Dicks** explained the proposed legislation does not compromise existing eminent domain statutes. Instead of forcing a locality to take title to blighted property and condemn the house, under this legislation it can make necessary repairs before taking title to the house. He mentioned that although the Virginia Association of Realtors (VAR) has not yet been asked for a position on the legislation, he does not anticipate any opposition.
- **Delegate Cosgrove** commented that property rights advocates need to be informed about the proposed legislation to ensure it does not infringe on property rights.
- **T.K. Somanath** expressed his support for the proposed legislation.
- **Delegate Cosgrove** told the Commission that he would not entertain a motion on this bill, and asked Mr. Dicks to bring his recommendations to the full Commission meeting in November.

VII. Update from the Affordability, Real Estate Law, and Mortgages Work Group (20 mins.)

- **Delegate Rosalyn Dance**
 - At the joint work group meeting, it was determined that the proposed legislation involving manufactured home titling was not yet ready to be presented to the full Commission. John Rick and Tyler Craddock, with the Virginia Manufactured and Modular Housing Association, are working together to develop a bill draft by the full Commission meeting in November.
 - The work group also discussed the Fair Housing Law bill that was introduced last session. Discussion came from Connie Chamberlin, with Housing Opportunities Made Equal (HOME) and Mark Flynn, who both agreed that the current language is too broad, and Mr. Flynn was also concerned about the lack of feedback regarding the bill. They will revise the bill and will hopefully be able to make a presentation at the full Commission meeting in November.

VIII. Public Comment

- There was no public comment.

IX. Adjourn

- The meeting was adjourned at 2:53 p.m.

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice Chair
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VIRGINIA HOUSING COMMISSION

AGENDA

Virginia Housing Commission Governor's Housing Conference, Hampton Roads Convention Center, Grand Ballroom C 1610 Coliseum Drive, Hampton, Virginia

Members present: Delegate John Cosgrove, Senator Mamie Locke, Delegate Daniel Marshall, Mark Flynn, T.K. Somanath, and Melanie Thompson

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate John Cosgrove; Chair**
 - The meeting was called to order at 1:00 p.m.
- **Delegate Cosgrove** suggested that meetings may be more effective if the presenters would submit their materials to Elizabeth Palen at Legislative Services one week prior to the meeting date; she will then be able to send the materials to the members for prior review.

II. Report From the Neighborhood Transitions and Residential Land Use Work Group

- **Repair of Derelict Buildings—proposed legislation**
 - **Delegate Cosgrove** noted that Delegate Dance was unable to attend the meeting, and asked if anyone from the City of Richmond was present to speak on this issue.
 - **Jon Baliles**, Planning & Development Review, City of Richmond, explained the concept of receivership. After initiating spot blight proceedings, localities would be permitted to appoint a receiver to make necessary repairs to the property to bring the building up to Code before the spot blight proceedings conclude. This process will be used for long-vacant and blighted properties and will restore those buildings to a habitable condition.
 - **Jon Baliles** noted that at the last meeting involving receivership, Delegate Cosgrove asked the city to discuss the proposed legislation with Joe Waldo. A summary of the bill has been sent to Joe Waldo, but Mr. Waldo has not

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yet responded, so the city has not had the opportunity to discuss the matter with him.

- **Delegate Cosgrove** mentioned that Delegate Chris Stolle called recently with questions about receivership. He asked Mr. Baliles to contact Delegate Stolle and answer those questions.
- **Jon Baliles** ensured Delegate Cosgrove that he would speak with Delegate Stolle and address his concerns prior to the Commission meeting in December.
- **Delegate Cosgrove** asked Chip Dicks, with the Virginia Association of Realtors, whether the bill had been sufficiently amended over the interim to address the concerns with the bill in its original form.
- **Chip Dicks** responded that he believed it had been; there were concerns with the original bill that it bypassed eminent domain and due process procedures. This version of the bill requires the locality to first make a determination that the house meets the requirements for spot blight, which requires the locality to take the property at the end of the process. Receivership is a process by which the locality may go to court and appoint a receiver to make the necessary repairs to the property rather than condemning it; while this process takes place the property owner remains the owner. Then the property may be sold for a greater value than it otherwise would have been. Receivership is more beneficial to the original property owner because this bill provides for any profit from the sale of the property to be given to him, whereas if the property were sold in its dilapidated condition there would be no surplus. The locality has the authority to place a lien on the property up to the amount of the investment. Receivership may also help in circumstances involving the derelict structure legislation recently passed by this Commission. To his knowledge, none of the professional real estate organizations have any issues with the bill in its current form.
- **T.K. Somanath** urged the Commission to support the bill; historic buildings are being left in disrepair and this bill would help to address that problem.
- **Delegate Marshall** recommended that the Commission address any eminent domain concerns from property rights advocates, including Mr. Waldo, before the next meeting in December.
- *Action on the bill was delayed until the December meeting.*
- **Landlord-Tenant Issues**
 - **Prohibition on Self-Help**
 - **Christy Marra**, with the Virginia Poverty Law Center (VPLC), explained that the purpose of this legislation is to align provisions of the Virginia Landlord-Tenant (VLTA) with corresponding provisions of the Virginia Residential Landlord-Tenant Act (VRLTA). The VLTA expressly states that a landlord cannot recover possession through self-help, including turning off essential services or changing the locks without a court order. The Virginia Court of Appeals held in January that when a lease does not fall under the VLTA, then the tenant can inadvertently waive the

protection prohibiting self-help. This bill is designed to add to the VLTA the provisions that are found in the VRLTA, which states that this protection cannot be waived.

- **Chip Dicks** explained that no one in the real estate industry disputes the need for clarification. There is disagreement, however, over line six, because there is no definition for “residential dwelling unit.” It is common in commercial leases for a landlord to use self-help in evicting a tenant, and this has been consistently upheld by the Virginia Supreme Court. Additionally, hotel and motel interest groups have expressed concern regarding the requirement in lines 25 and 26 that will force them to obtain unlawful detainers to kick out guests.
- **Christy Marra** noted that under the VRLTA a hotel/motel guest is entitled to protection if that person has been a guest for more than 30 days, and the VPLC wants to include this protection in the VLTA.
- *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **Inclusion of Termination Notice in Summons for Unlawful Detainer—proposed legislation**
 - **Christy Marra** explained that stakeholders are still working together to reach an agreement on this bill.
 - **Chip Dicks** asked the Commission to pass the bill by for consideration, and take it up again at December’s meeting.
- **Issuance of Receipts Accounting for Rental Payments—proposed legislation**
 - **Christy Marra** explained that stakeholders had all reached an agreement regarding this bill, and it is acceptable in this form. The bill requires a landlord to issue a rent receipt to a tenant detailing how the tenant’s rent payment is credited, provided the tenant makes this request in writing. The landlord must issue the receipt within 10 business days of receipt of the tenant’s written request.
 - *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **HB 2045; Blighted Property (Ebbin, 2011)—no proposed legislation**
 - **Delegate Cosgrove** noted that there is no proposed legislation regarding blighted property and former HB 2045.
- **The Future of Tax Credits After *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner of Internal Revenue*, 639 F.3d 129 (2011)—no proposed legislation**
 - **Delegate Cosgrove** noted that there is no proposed legislation at this time regarding tax credits.

III. Report From the Common Interest Communities Work Group

- **The Virginia Real Estate Time-Share Act—proposed legislation**
 - **Delegate Cosgrove** noted that he would explain the work done by the Common Interest Communities Work Group since Senator Whipple was

unable to attend the meeting because she was attending the Senate Finance retreat.

- **Delegate Cosgrove** noted his intention to patron the bill. This bill changes the way the time-share industry does business in Virginia. Although the legislature cannot constitutionally allow current owners of time-shares to alter their existing contracts with time-share companies, this bill will affect how time-shares are sold, marketed, and resold.
- **Delegate Cosgrove** briefly explained the changes to the Time-Share Act that this legislation would impose:
 - A time-share company licensed outside the state of Virginia does not have to be licensed in Virginia to solicit existing customers who are residents of Virginia. This will allow existing customers to purchase or trade time-shares through the out-of-state company with which they are currently doing business.
 - New resale regulations require anyone reselling a time-share in Virginia to be regulated in Virginia.
 - Time-share deeds cannot be transferred without the consent of both parties; this is to prevent unfair practices on behalf of both the consumer and the developer.
 - A new section requires that audited annual reports be provided to time-share owners.
 - A buyer's acknowledgment must be provided to time-share purchasers disclosing information including whether the developer owns a buyback program or not, and makes clear that the purchaser is buying a time-share for personal use, rather than investment purposes or resale potential, only. These disclosures must be provided on a separate document from the contract, and written in clear and concise language.
 - New sections include improved disclosure requirements and prohibited practices.
 - The bill provides that the Common Interest Community Board (CICB) will regulate the time-share industry in Virginia.
- **Senator Locke** asked why the punishment for violation of these sections was changed from a felony to a misdemeanor.
- **Delegate Cosgrove** explained that this was due to the financial implications involved in including felonies in legislation; additionally, in the past 5 years no one has been charged under this section.
- *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **Bank-Owned Abandoned Condominium Foreclosures—no proposed legislation**
 - **Delegate Cosgrove** explained that there is no proposed legislation at this time regarding bank-owned abandoned condominium foreclosures.
- **SB 1253; Virginia Property Owners' Association Act (Vogel, 2011)—no proposed legislation**

- **Delegate Cosgrove** explained that there is no proposed legislation regarding the Virginia Property Owners’ Association Act and former SB 1253.

IV. Report From the Affordability, Real Estate Law, and Mortgages Work Group

- **Manufactured Home Titling—no proposed legislation**
 - **Delegate Cosgrove** noted that he would explain the work done by the Affordability, Real Estate Law, and Mortgages Work Group since Delegate Oder had been the chair. There is no proposed legislation at this time regarding manufactured home titling.
- **SB 830 Fair Housing Law (Locke 2011), and HB 1578; Fair Housing Law (Dance, 2011)—no proposed legislation**
 - **Delegate Cosgrove** explained that there is no proposed legislation regarding fair housing law and former SB 830 and HB 1578.

V. Report From the Mortgages Sub-Work Group

- **Potential Impacts of Consumer Financial Protection Bureau on Mortgage Loan Originators in Virginia—proposed legislation**
 - **Delegate Marshall** asked Maureen Stinger of the Virginia State Corporation Commission to provide the Commission with an update on how Virginia’s recently enacted legislation governing mortgage loan originators (MLOs) will be affected by the newly established Consumer Financial Protection Bureau (CFPB).
 - **Maureen Stinger** explained that the federal government enacted the the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act in 2008, and allowed states two years to craft conforming legislation. Virginia was at the forefront in enacting legislation regulating MLOs. Although Virginia has regulated lenders and brokers for at least 30 years, MLOs are new class of licensees—the actual human beings dealing directly with customers. The federal act requires licensure for any individual who engages in the business of being a mortgage originator. Virginia’s legislation uses the phrase “acting as a MLO,” which is a stricter standard, and would include, for example, the Virginia Housing Development Authority (VHDA) and the Department of Housing and Community Development (DHCD), because they act as MLOs without engaging in the business of being a mortgage loan originator. The Department of Housing and Urban Development (HUD) issued a final ruling over the summer interpreting Virginia’s act, and clarified that HUD no longer has the ability to issue exceptions, but it did clarify who is subject to exemptions, including housing authorities and housing finance agencies such as VHDA. HUD ruled that certain bona fide non-profit organizations are subject to exemptions—and there are strict criteria for what that entails so as to avoid a for-profit organization creating a non-profit and feeding mortgages into the for-profit company.
 - **Maureen Stinger** explained that the bill that has been crafted to bring Virginia into compliance with the SAFE Act as per the HUD ruling amends Virginia Code §§ 6.2-1700 and 6.2-1701. This bill changes “act as” to “engage in the business of” and will conform Virginia’s legislation to the

federal act. Every other chapter in Title 6.2 uses the “engaging in the business of standard” as well, hence this is not a departure from existing Code language.

- **Bill Shelton**, the director of DHCD, added that until HUD issued the ruling over the summer it was unknown how Virginia’s legislation would be affected. Affordable housing programs, down payment assistance programs, and the like, were swept into licensure by Virginia’s act, but now the SCC can exempt government entities or establish standards for bona fide non profits, and this will remove what has been an impediment to affordable housing programs in Virginia.
- **Delegate Marshall** asked Ms. Stinger if there was any chance the bill would need to be re-written before session.
- **Maureen Stinger** explained that she is still discussing technicalities with the federal government, and there may be technical changes in order to ensure the legislation complies with the federal act, but any changes will be explained at the full Commission meeting in December.
- **Delegate Marshall** invited other interested parties to speak about the proposed legislation
- **Dewayne Alford**, with the Virginia Association of Housing and Community Development Officials (VAHCDO), explained that VAHCDO works with block grants to assist in rehousing across the Commonwealth. Amending the existing legislation would make VAHCDO that much more efficient and open up the pipeline of funding it receives from HUD. VAHCDO is in favor of the legislation, and believes this bill is more closely aligned with the original intent of the act—to protect consumers while facilitating assistance to low-income individuals.
- **Delegate Cosgrove** noted that the Commission would delay action on this bill until the full Commission meeting in December to allow the SCC to make any necessary technical changes.
- **Mortgage Loan Originators/Owner Financing—proposed legislation**
 - **Chip Dicks** explained that this bill would amend Virginia Code §§ 6.2-1600 and 6.2-1602 to provide an exemption section for owner financing. Currently, although the definition of mortgage loan excludes refinancing by owners, real estate broker firms are treating owner financing as though it is not exempt, therefore a separate section to exempt owner financing is necessary.
 - *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **Foreclosure on Liens for Unpaid Assessments—proposed legislation (2)**
 - **Pia Trigiani**, with MercerTrigiani, explained the first bill deals with Virginia Code §§ 55-79.84 and 55-516 and liens for assessments. Condominium associations may enforce assessment liens through foreclosure on the unit, and there are often first trust liens on the property. The Virginia Supreme Court held in *Board of Directors of the Colchester Towne Condominium Council of Co-Owners v. Wachovia Bank* that the proceeds of a foreclosure sale for a condominium would have to be first

applied to the first trust lien before an association may recover any assessment liens.

- **Delegate Marshall** invited other interested parties to address the Commission.
- **Matt Bruning**, with the Virginia Bankers Association (VBA), explained that the VBA has not yet had an opportunity to review *Colchester* and its applicability to current law, and asked that the Commission delay action on the bill until the December meeting. There were no objections to this request.
- **Pia Trigiani** explained the second proposal, which involves the enforcement of rules under Virginia Code § 55-513. Often times properties are not properly maintained after foreclosure has taken place. This bill proposes a solution from the Condominium Act and applies it to the Property Owners' Association Act, which allows a homeowners association access to the lot to perform necessary maintenance and repairs. These costs will be charged to the owner of the lot.
- **Matt Bruning** noted that the VBA is not opposed to the concept of this bill, the VBA wants to ensure that the costs are properly attributed to the owner of the property at the time the costs are incurred.
- **Pia Trigiani** acknowledged that if the costs are incurred while the property is owned by the original property owner, then he is responsible for the expenses, and if the property is lender-owned when the costs are incurred, the lender is responsible for the expenses.
- **Matt Bruning** agreed that lender-owned properties should be maintained by the lender, and if they are not this bill is a reasonable alternative.
- **Delegate Marshall** requested that action on these bills be delayed until the December meeting. There was no objection.
- **SB 795; Foreclosure Procedures (McEachin, 2011)—referred to the Virginia Foreclosure Task Force—no proposed legislation**
 - **Delegate Marshall** explained that at the request of the patron, this bill was referred to the Virginia Foreclosure Task Force.

VI. Report From the Housing and Environmental Standards Work Group

- **Sustainable Community Planning—no proposed legislation**
 - **Delegate Cosgrove** noted that he would explain the work done by the Housing and Environmental Standards Work Group since Senator Watkins was unable to attend the meeting because he was attending the Senate Finance retreat. There is no proposed legislation at this time regarding sustainable community planning.
- **Charlottesville Affordable Housing Program—no proposed legislation**
 - **Delegate Cosgrove** explained that the Charlottesville Affordable Housing Program spoke before the Commission earlier in the interim to provide an update, but no proposed legislation resulted.
- **The Virginia Tobacco Indemnification and Community Revitalization Commission and Energy Efficient Affordable Housing—no proposed legislation**

- **Delegate Cosgrove** explained that the Commission heard an update on funding by the Virginia Tobacco Indemnification and Community Revitalization Commission and the work that has been done on energy efficient affordable housing by the Partnership for Design and Manufacture of Affordable, Energy Efficient Housing Systems, but that no proposed legislation resulted.
- **Update on Green Buildings Code**
 - **Emory Rodgers**; Deputy Director, Department of Housing and Community Development
 - The International Green Construction Code (IGCC) is the standard in the Uniform Statewide Building Code (USBC) and the Fire Code. There was a final hearing on the IGCC on November 1–5. The IGCC goes beyond the USBC and the Fire Code; there are elements involving land use, landscaping, and post-occupancy requirements, among other issues. The IGCC will be published in March 2012. Based on the hearings, there will likely be petitions involving mandates that may be required by local governments. There will also likely be stakeholders who seek to incorporate part of all of the IGCC into Virginia’s code.
 - **Delegate Marshall** asked Mr. Rodgers to return to the December meeting to give a more detailed overview. He expressed concern that an extensive cost-benefit analysis has not been performed yet.
 - **Delegate Cosgrove** agreed that this topic could be discussed more thoroughly at the December meeting, however, since he operates a construction and demolition debris recycling business another member will be asked to run the meeting at that point.
 - **Emory Rodgers** noted that many provisions in the document have not yet had a cost analysis. There are things outside of the purview of DHCD’s regulatory process
 - **Delegate Marshall** asked when the IGCC will become part of the USBC.
 - **Emory Rodgers** explained that whether any of the IGCC becomes part of the USBC will be determined by a consensus of the state board. The board may decide that the current energy code is adequate.
 - **T.K. Somanath** asked whether Mr. Rodgers could also give a presentation on best practices in energy conservation at the December meeting if time allows.
 - **Emory Rodgers** noted that the number of best practices is extensive, and a presentation on all environmental best practices will require further expertise.

VII. Report From the Municipal Water Issue Sub-Work Group

- **Municipal Utility Services—proposed legislation**
 - **Delegate Cosgrove** noted that Delegate Oder had been the chair of this sub-work group, and asked if a member of that group would speak on this issue.

- **Chip Dicks** explained that there are still issues to resolve with this legislation. Currently, a tenant can get water and sewer services in his landlord's name, and if the tenant fails to pay his water and sewer bills, the locality can put a lien on the landlord's property. A compromise that has been suggested is to allow a landlord to conduct a credit check on the tenant, and after this has been done the tenant can open a water and sewer account in the landlord's name. Another compromise is to allow the landlord to collect a security deposit from the tenant that may not exceed five months of water and sewer bills, which will average approximately \$150.00. It is not practical for a landlord to take a tenant to court because court costs and fees can exceed the amount of the lien. The VPLC has an objection to this proposal, and the proposed solution was to exempt Section 8 tenants from the security deposit requirement, however, this is one of the issues still being discussed.
- **John Lain**, with the Virginia Water Waste Authorities voiced his support for this bill.
- **Brian Gordon**, with the Apartment and Office Building Association (AOBA) also voiced his support for this bill.
- **Christy Marra** explained that the VPLC is concerned with the provision allowing a landlord to obtain a security deposit from a tenant. Five months of water and sewer services could be significantly higher than \$150, and this may prove to be cost-prohibitive for many tenants. Although exempting Section 8 tenants is helpful, there is a scarcity of Section 8 vouchers, and there are many people who are eligible for but unable to obtain these vouchers.
- *Action on the bill was delayed until the December meeting.*

VIII. Housing Policy Direction

- **Susan Dewey**, Director, Virginia Housing Development Authority
 - There has been significant progress in the past two years, and Virginia is in the forefront of housing policy. Moving forward with the housing policy framework, the goals include finding solutions to homelessness, focusing increased attention on issues cutting across Secretariat boundaries since housing is related to economics, transportation, and many other issues, and addressing issues that are subject to outcomes in other policy areas. There is a broad range of housing objectives: 1) recognize the role of the housing industry as vital economic development engine within the Commonwealth, 2) promote sustainable and vibrant communities, 3) ensure the provision of a range of housing options, and 4) prevent and reduce homelessness.
 - The nature of the work that is being done is very broad and a large group of stakeholders are guiding policy development.
 - The Housing Policy Work Group and an Advisory Committee are guiding the framing of recommendations for each goal, and combined make up approximately 80 members.

- The Homeless Outcomes Advisory Committee has developed a Homeless Outcomes Action Plan and seeks to reduce homelessness by 15% over the next few years.
 - The Virginia Foreclosure Task Force has been focusing on the legislation that was referred by the General Assembly and the Housing Commission, and will issue a report on those issues shortly. The Task Force also studies foreclosure data and its impact on the Commonwealth.
 - A Housing Policy Track is being established at the Governor’s Housing Conference and will study issues in the housing policy report and providing an in-depth analysis of those issues.
 - Key issues in housing policy in the coming year are the implementation of the Homeless Action Plan, addressing foreclosure issues, and initiating other activities that can be moved forward quickly.
 - Housing has a significant impact on the economy, and housing policy has focused on ensuring a flow of mortgage credit for the purchase and rental of property. The Foreclosure Task Force has been tracking and reporting on foreclosure trends, which includes financial literacy, and has been working with the Emergency Home Loan Program.
 - In promoting sustainable communities, DHCD and VHDA is working on the initiation of a process to build consensus on voluntary “visitability” and Universal Design standards for housing programs to assist those with special needs.
 - To expand housing options, policy has looked to better accommodate those with special needs, including those with physical or mental disabilities, those on a fixed income, etc.
 - One of the keys to reducing and preventing homelessness is rapid rehousing for those who are recently homeless. There have been new positions established within the Virginia Department of Behavioral Health and Developmental Services (DBHDS) and the Department of Medical Assistance Services (DMAS) to coordinate housing and support services.
 - Factors that may impede progress in the future are the uncertain impact of significant federal fiscal retrenchment on state agency housing activities and priorities and Virginia’s overall budget. Continuing to look to resources available to Virginia to coordinate those resources and use them as efficiently and effectively as possible will be very important moving forward.
- **Mark Flynn** commented that the work being done to address the housing-jobs-transit link and promoting sustainable communities is fantastic. Local government planning plays a role in accomplishing these goals, and the tool the General Assembly used was Urban Development Area (UDA) legislation. The 2012 session may see a repeal of that legislation, and that will also have an affect on achieving these housing policy goals.
- **T.K. Somanath** asked about incentives for the promotion of sustainable communities.

- **Susan Dewey** responded that VHDA administered a federal loan housing tax credit that includes points for sustainability.
- **Bill Shelton** added that DHCD provides incentives for communities through funding

IX. Public Comment

- There was no public comment.

X. Adjourn

- The meeting was adjourned at 2:41 p.m.

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
House Room C, General Assembly Building
December 13, 2011
10:00 A.M.

Members present: Delegate Cosgrove, Senator Locke, Senator Whipple, Senator Watkins, Delegate Dance, Delegate Marshall, Mark Flynn, T.K. Somanath, and Melanie Thompson.

Staff present: Elizabeth Palen and Beth Jamerson.

I. Welcome and Call to Order

- **Delegate John Cosgrove; Chair**
 - The meeting was called to order at 10:05 a.m.

II. Current Housing Conditions in Virginia

- **Sonya Waddell**, Associate Regional Economist, The Federal Reserve Bank of Richmond, provided the Commission with an update on current housing conditions in Virginia.
 - Although the Federal Reserve has an additional two to three quarters of data since April, the housing situation remains basically the same. While conditions are not deteriorating as in 2009, there are still near-record levels of delinquencies and foreclosures, and home sales have not come back to the levels we saw last decade. House prices, while stabilizing, are continuing to fall on a year-over-year basis. The Federal Reserve does not find this to be surprising news.
 - The inventory of foreclosures—the share of mortgages that are in foreclosure—has fallen throughout 2011 in Virginia, and is now at 1.85% according to the Mortgage Bankers Association. This is notably below the peak of 2.18% in the second quarter of 2009. Nationwide, approximately 4.4% of all mortgages are somewhere in the foreclosure process, which translates to about 2 million homes nationwide, and 26,000 homes in Virginia. The difference between U.S. and Virginia is not just representative of states like Nevada or Arizona, or other states that are known to have a foreclosure problem; Virginia is in the bottom 10 states in terms of foreclosure rates.
 - Delinquency rates are also falling—this is the share of mortgages that are more than 90 days delinquent. In the fourth quarter of 2009 that rate

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peaked at over 3.6% in Virginia. By the third quarter of 2011, that rate is 2.35%, and in the U.S. that rate is 3.5%.

- Shadow inventory is defined here as the total number of mortgages that are either 90 days delinquent or somewhere in the foreclosure process. The shadow inventory peaked at approximately 81,000 homes in Virginia in the first quarter of 2009, and that number now is just under 60,000. There are around 200,000 units in Virginia that are vacant; this number does not include homes that are rented and not occupied, sold and not occupied, and the homes for seasonal, recreational, or occasional use. When this number is added to the shadow inventory, there are about 260,000 homes that are vacant. Existing home sales have not reached their 2001–2002 levels; it is worth noting that home sales are above the levels we saw in 1989–1997, but there is a much larger glut of homes on the market now than there were at that time.
- Based on this data, Ms. Waddell estimates that even with no new inventory, it will still take over two years to work the existing inventory and shadow inventory off the market. The bottom line is that we are probably facing another two years of a sluggish housing market. Virginia existing home sales has followed U.S. home sales fairly closely, and based on the decline in new home sales and construction in the U.S., Ms. Waddell suspects that Virginia will experience a similar trend.
- Because there are a lot of homes that are not selling very quickly, house prices are starting to stabilize but are still declining on a year-over-year basis. In the third quarter of 2011, Virginia house prices rose 0.9%, but on a year-over-year basis, house prices still fell 3.1%. Virginia saw a bigger increase in housing prices than the nation, but not much sharper of a decline. The average house price in Virginia is also well above the national average, which was not true in 2004. Virginia housing prices are not yet back to their 2003 levels. Referring to the graph, Ms. Waddell noted that peak to trough, Virginia saw 14.2% decline in house prices.
- According to a recent CoreLogic release, 22.9% of Virginia homeowners are facing negative equity, with an additional 6.1% are facing near-negative equity, which means that they have less than 5% equity in their homes. This puts Virginia in the top ten states in terms of negative equity levels; Nevada was the top state, with 65% of homeowners facing negative equity.
- In 2007, more than half of all foreclosures were among subprime borrowers. By the third quarter of 2011, that number had fallen to just over 25 percent. Note, however, that in the third quarter of 2011, there more than four times more borrowers than in 2007. By way of example, in 2007 there were 3,200 subprime mortgage loans in foreclosure, and by the third quarter of 2011 there were over 8,000 subprime mortgage loans in foreclosure. Although most foreclosures are with prime borrowers, subprime loans are still disproportionately represented in the foreclosure pool in Virginia; while subprime borrowers account for about 1/12 of total mortgages, they make up over 25% of all foreclosures.

- The Winchester, Washington D.C., and Virginia Beach areas, not surprisingly, have seen some of the sharpest house price declines.
- The percentages of owner-occupied loans in foreclosure or REO or with a more than 90 day delinquency used to be the highest in Northern Virginia, and now those percentages are spread out more evenly across the states.
- When considering why Virginia has a high level of negative equity, but a relatively low foreclosure rate, note that negative equity alone does not lead to foreclosure or default; usually there is an additional factor, such as unemployment or health problems. In Virginia the unemployment rate is still quite a bit lower than that of the U.S.; in October the unemployment rate in Virginia fell from 6.5% to 6.4%, and the U.S. unemployment rate as of November is 8.6%. October also saw a payroll addition of 14,000 jobs in Virginia and a payroll addition of 120,000 nationwide.
- Unemployment in Virginia is highest in the south and southwestern parts of the state.
- The housing market continues to be a drag on the economy; house prices are still falling on a year-over-year basis, and foreclosure inventories remain at record levels. However, the shadow inventory of homes is contracting as the number of homes entering delinquency and foreclosure is reducing, and labor markets in Virginia are beginning to stabilize, as they are across the nation.
- **Senator Watkins** asked Ms. Waddell if she has any statistical data on home equity lines of credit (HELOC).
 - **Sonya Waddell** responded that the data available on HELOCs is somewhat unhelpful in that they are unable to connect loans to each other, and therefore she does not have the data to allow her to make any confident conclusions about HELOCs. The Federal Reserve Bank of Richmond has recently received new data that may provide some information on the subject.
- **Senator Watkins** expressed concern over the percentage of homeowners facing negative equity, and speculated that if the numbers of first deeds of trust are combined with the number of HELOCs, the percentage of potential foreclosures will increase. This is potentially problematic in the future if the economy does not vastly improve and foreclosure rate continues.
 - **Sonya Waddell** agreed with Senator Watkins.
- **Senator Watkins** noted that this is a pervasive problem in Virginia because a lot of times those borrowers who have taken out HELOCs will do nothing but pay the interest off every month and never pay anything toward the principal borrowed. If it is a second mortgage in an area where housing prices have fallen, there's no requirement on HELOC to look at appraisal values each year, as they must do for mortgages. Could be getting away from us without knowing it.
 - **Sonya Waddell** explained that as far as she can tell, there are fewer HELOCs being extended in recent years, so the problem would largely be with HELOCs that were extended in 2007–2008.
- **Senator Watkins** noted that he would include HELOCs that were extended from 2006–2008 in the analysis.

III. Attorney General's Foreclosure Response

- **Mark Kubiak**, Assistant Attorney General, with the Antitrust and Consumer Litigation section of the Office of the Attorney General, offered a brief update on the multistate mortgage servicer investigation and foreclosure rescue.
 - **The Multistate Mortgage Servicer Investigation:**
 - The Office of the Attorney General has participated in a multistate investigation of alleged fraudulent foreclosure documentation and deceptive servicing practices since October 2010. The Antitrust and Consumer Litigation section handles the multistate foreclosure investigation on the staff level for the Virginia Attorney General.
 - The investigation continues; negotiations with servicers are ongoing and, though significant progress has been made, no settlement has been announced and no settlement has been reached with any servicer to date. Due to the confidential nature of negotiations and investigation, Mr. Kubiak explained that he cannot provide a specific update on either of those topics, but will give an overview of the subject matter of the investigation and its major players.
 - At the state level, the investigation includes attorneys general offices in 48 states (and the District of Columbia). There is an Executive Committee comprising representatives from 13 states: Arizona, Colorado, Connecticut, Delaware, Florida, Illinois, Iowa, Massachusetts, North Carolina, Ohio, Tennessee, Texas, and Washington. New York and California were previously on the Executive Committee, but are not currently part of the investigation. The Executive Committee also includes state banking regulators from three states (Maryland, Pennsylvania, and New York), and is responsible for conducting servicer examinations of state-regulated entities.
 - At the federal level, the investigation includes the U.S. Department of Justice, the Treasury Department, Housing and Urban Development (HUD), and the Federal Trade Commission (FTC). The investigation does not include “horizontal review” regulators such as the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, or the Federal Deposit Insurance Corporation (FDIC), which may be taking independent action. The OCC recently announced settlements with eight servicers for “unsafe and unsound practices relating to residential mortgage loan servicing.” Anything achieved by the individual regulators would be in addition to what is being achieved by the multistate investigation. Regulators such as OCC have the ability to assess fines to licensees.
 - With respect to the servicers, the investigation currently involves the five largest servicers: Bank of America, Wells Fargo, J.P. Morgan Chase, CitiMortgage, and GMAC/Ally. The first four are affiliated with national banks, while the fifth is a state-chartered

entity. These five largest servicers make up roughly 59% of the total market, with a relatively large drop off in market share after the top five. The largest 14 servicers make up 67% of the market.

- Three primary areas of servicing standards are being examined:
 - ❖ Fraudulent Foreclosure Documentation
 - The concern here relates to alleged “robo-signing,” which refers to situations where officials from the banks or servicers sign off on important documents (e.g., court affidavits) without verifying information therein and/or without signing in the presence of a notary public.
 - This relates primarily (but not exclusively) to judicial foreclosure states. Virginia is a non-judicial foreclosure state, however, sworn statements can be part of the process in non-judicial states (e.g., bankruptcy actions, litigated matters).
 - ❖ Loss Mitigation
 - This relates to whether consumer borrowers have received adequate disclosures of loss mitigation (foreclosure alternative) options offered through their lender or servicer, and whether they have been given an opportunity for consideration in those options.
 - Loss mitigation options include loan modifications, short sales, and deeds-in-lieu.
 - This could result in situations where the foreclosure arm of the servicer “races” with the loss mitigation department, causing the foreclosure of a home while the borrower waits for loss mitigation relief.
 - ❖ Service Members Civil Relief Act
 - The concerns here relate to compliance with the interest rate relief (6% limit) and foreclosure protections (9 months after release from active duty) provided for covered loans under this federal statute.
- The potential resolution could take various forms as settlement discussions remain fluid. It will not likely include an injunctive component, but will likely include a monetary component. The goal will be to direct monies to compensate those that have been harmed by alleged wrongful foreclosure practices.
- The Office of the Attorney General remains optimistic that a settlement will be reached; one that will require reasonable servicing and foreclosure process reforms and provide tangible benefits to homeowners across the country that may have been injured by the existing process. Mr. Kubiak was unable to provide a timeline on a resolution. It could be a matter of weeks or

months. This investigation is more complicated than usual with difficult and complex issues, multiple parties, including state and federal enforcement agencies and industry participants.

Additionally, this is an industry-wide negotiation, whereas in the past, most negotiations have been with a single entity.

○ **Foreclosure Rescue:**

- Foreclosure rescue scams typically involve a third party not affiliated with homeowner's lender or servicer. These third parties promise they can help homeowners avoid or prevent foreclosure. For example, loan modification companies charge large advance fees, promise they can help obtain a loan modification, and never deliver on that promise.
- The tools that can be used to pursue foreclosure rescue scams include the Virginia Consumer Protection Act (VCPA), Va. Code §§ 59.1-196 to 59.1-207. The VCPA generally prohibits suppliers from engaging in fraud, false pretense, false promises, or misrepresentations in connection with consumer transactions. Another tool is the Foreclosure Rescue law, Va. Code § 59.1-200.1, which was proposed by HOME and passed by the General Assembly in 2008. The Office of the Attorney General sought amendments to clarify advance fee prohibition. These amendments were passed by the General Assembly in 2009 and went into effect July 1, 2009. The amendments made it clear that suppliers of services to avoid or prevent foreclosure are prohibited from accepting advance fees where the transaction does not involve the sale or transfer of home. The amendments are meant to reach prevalent scams where a company accepts large advance fees and does nothing.
- Four enforcement actions have been brought against foreclosure rescue operators, three of which have been settled. Those actions involved Nationwide Loan Modification Bureau, LLC (Va Beach), Real Estate Resolutions, LLC (Va Beach), American Neighborhood Housing Foundation (Chesapeake), and R.L. Brad Street (Chesapeake), which is still pending.
- In terms of individual consumers, the Office of the Attorney General encourages distressed homeowners to maintain contact with their mortgage lender or servicer to discuss their options. If homeowners elect to contact a third party for help, it should be a HUD-approved housing counselor. Additionally, consumers should be wary of any company that requests advance fees to assist them in avoiding or preventing foreclosure. If consumers fall victim to a foreclosure rescue scam and are out money, they should file complaints with the Virginia Office of Consumer Affairs (OCA) and provide a copy to the Virginia Bureau of Financial Institutions (BFI). The Office of the Attorney General meets regularly with both the OCA and the BFI to discuss complaint activity, and they can make informal referrals to the Office of the Attorney General.
- In terms of Complaints, they are looking for Complaints where advance fee was taken after July 1, 2009, when the amendments went into effect. If an advance fee was taken before that date, it does not mean nothing can

be done—the Virginia Consumer Protection Act still applies to prohibit deceptive conduct (*i.e.*, receiving a fee and doing nothing).

- Complaints should be very detailed and include the following: 1) the name and address of the company they dealt with; 2) what the company promised them and whether or not the company delivered; 3) where the property was located; 4) when and how much they paid the company; 5) why they used the company’s services; 6) copies of contracts; 7) evidence of payment, including receipts, cancelled checks, and/or bank statements; 8) correspondence from the company; 9) any handwritten notes; and 10) any other materials that may be helpful.

IV. Proposed Legislation

- **Repair of Derelict Buildings/Receivership**

- **Jon Baliles**, with the Department of Planning and Development Review in the City of Richmond, explained that this bill modifies the concept known as receivership, which will be a useful tool for localities to repair derelict residential structures. The process allows for a receiver to repair a structure that has been declared derelict and blighted under the existing spot blight abatement statute. Once the locality has initiated spot blight proceedings, the court may appoint a receiver to take possession of the blighted property and make the necessary repairs to restore the building to a livable condition. A judge will approve the receiver and the receiver’s rehabilitation plan, and place a lien against the property for the cost of the repairs once they are completed. The ownership rights of the property remain with the owner throughout the process, and at any point he may pay the receiver’s lien and retain ownership, or sell the property if so desired. If the owner is unable or unwilling to pay the lien, the property is sold and any proceeds remaining after the lien has been paid are returned to the original owner. Because the receivership process uses the existing spot blight abatement statute to take possession of the property, it does not expand the taking power of localities or allow for zoning changes. Using receivership, the original property owner receives any remaining proceeds from the sale of the property, whereas under a spot blight proceeding, the property would be taken and then sold, thereby decreasing the profits realized by the owner.
- **Jon Baliles** noted that the City of Richmond has made a concerted effort to contact Joe Waldo about the bill, but has yet to receive a response. Additionally, Senator Stolle had some questions about the bill; the City contacted his office and his office has informed the City that his concerns have been addressed.
- **Chip Dicks**, with the Virginia Association of Realtors, added that this bill includes language in the enactment clause that says nothing contained in the bill affects or supersedes eminent domain authority in Section 1 legislation that was passed by the 2007 General Assembly. This bill allows a locality to use private community development to fund improvements to derelict structures so that the property can be auctioned with a reasonable chance at being sold at a profit. Provisions in this bill

expressly provide that any surplus is given to the original owner. Without this bill the locality's only other option is to go through spot blight proceedings and the property is condemned.

- **Delegate Dance** noted that over the interim, interested parties have worked together to draft the bill before the Commission, and the proposal is a compromise that suits everyone.
- **Senator Watkins** commended the bill to the Commission, noting that receivership is a novel approach to solving a persisting problem among the older cities and counties in the commonwealth.
- *The bill was properly moved and seconded, all were in favor, and the bill was endorsed by the Commission. Delegate Dance will be the chief patron of the bill.*
- **Rental Receipts**
 - **Christie Marra**, with the Virginia Poverty Law Center (VPLC), explained that this proposal requires landlords to issue receipts for rental payments made using cash or money order at the tenant's request. The draft before the Commission also includes a provision requiring that the tenant's right to request a receipt be included in rental agreements in bold face, 10-point type size. VPLC believes it is important for tenants to know about their right to ask for a receipt.
 - **Brian Gordon**, with the Apartment and Office Building Association (AOBA), expressed concern with regard to the provision requiring notice by the landlord. This would require landlords to rewrite their leases, and even if it was included in a lease addendum that could be overly burdensome as well since these documents are often lengthy. In addition, the Virginia Residential Landlord-Tenant Act (VRLTA) supersedes any lease provision, and therefore this provision is duplicative.
 - **Chip Dicks** suggested that a provision requiring landlords to issue receipts alone accomplishes the VPLC's objective. The notice provision is somewhat problematic because it is difficult to require notice for one particular right. This provision would require all landlords to rewrite their leases. Mr. Dicks suggested endorsing the bill with only the provision requiring landlords to issue receipts upon request, and revisiting the notice provision after seeing how the receipt requirement alone works and whether it is effective.
 - **Delegate Marshall** asked Mr. Dicks what the word "cash" includes.
 - **Chip Dicks** responded that cash means actual paper currency, and does not include checks or any other form of payment. Most landlords have policies that they do not accept cash.
 - **Delegate Marshall** noted that if he is a landlord who does not accept cash or money orders, then this bill does not apply to him.
 - **Chip Dicks** agreed; this bill only affects landlords who accept cash or money orders for rental payments.
 - **Senator Whipple** mentioned that an earlier draft of this legislation provided that the landlord must present the tenant with a receipt for cash rental payments upon payment. This draft instead provides that a receipt

will be issued upon request by the tenant. If the receipt is provided upon the tenant's request, then the tenant needs to know that he has a right to request the receipt.

- **Chip Dicks** responded that under landlord-tenant laws there are rent escrow opportunities for the tenant, whereby the tenant can pay rent into escrow until, for instance, maintenance on the unit is performed. There is an entire chapter on tenant rights, and none of it is expressed in a separate notice provision.
 - **Mark Flynn** suggested an enactment clause stating that the notice provision applies only to leases entered into after July 1, 2012 would prevent the landlord community from rewriting leases in order to comply. Only new leases entered into after July 1, 2012 would be subject to the notice provision.
 - **Chip Dicks** responded that landlords would still be required to amend the lease forms.
 - **Christie Marra** responded that such an enactment clause is certainly better than no notice provision at all, and although landlords will have to amend lease forms that is not as burdensome as amending every single lease already in effect.
 - *The bill draft including only the requirement to issue receipts upon request was properly moved and seconded; those in favor were Delegate Cosgrove, Delegate Dance, Senator Watkins, Senator Whipple, Mark Flynn, T.K. Somanath, and Melanie Thompson, and those opposed were Delegate Marshall and Senator Locke. The bill was endorsed by the Commission. Delegate Dance will be the chief patron of the bill.*
- **Mortgage Loan Originator; Non-Profit Exemptions, Technical Changes**
 - The bill seeks to ensure Virginia's compliance with the federal SAFE Act in the wake of a recent ruling by the Housing and Urban Development (HUD). According to HUD, (which had been tasked with enforcing the SAFE Act before that responsibility was recently given to the Consumer Financial Protection Bureau) the current language in Virginia's statute requiring licensure of those "act[ing] as" mortgage loan originators encompasses non-profit agencies who are subject to an exception to the licensure requirements. Instead, HUD suggests those "engag[ing] in the business of" mortgage loan originators includes only those who act in a commercial context, and excludes "bona fide non-profit organizations." This legislation changes the language in Virginia's statute from "act as" to "engage in the business of" in order to ensure compliance with HUD's ruling and the SAFE Act.
 - *The bill was properly moved and seconded, all were in favor, and the bill received endorsement by the Commission. Delegate Marshall will be the chief patron of the bill in the House, and Delegate Dance will co-patron. Senator Watkins will patron the bill in the Senate.*
- **Water/Sewer Liens; Localities and Municipal Utility Services**
 - **Preston Bryant**, with McGuire Woods Consulting, representing Virginia Water and Waste Authorities Association, explained that currently, a

locality may place a lien on a landlord's property for the amount of outstanding water and sewer bills owed by a tenant. This bill amends the process that a locality must follow before placing a lien on property for the unpaid water and sewer bills of a tenant. The landowner must provide the tenant with written authorization that must be presented to local authorities before setting up an account for water and sewer services in the tenant's name. Also, local authorities must notify the landowner that a lien may be placed against his property if the tenant's water and sewer bills remain outstanding. The owner must be given a copy of any outstanding bill to allow the owner an opportunity to pay the overdue amounts if he so chooses. Additionally, a security deposit of no less than three months and no more than five months worth of water and sewer fees must be collected from the tenant by the locality, which will be applied to any outstanding amounts in the event that the tenant fails to pay the bill. The locality must also execute reasonable collection efforts to collect any overdue amounts from the tenant, and provide the owner with 30 days' written notice before the lien may be filed. If a lien is placed on the property, once the outstanding balance has been satisfied the lien must be removed within 10 days. The bill also exempts a tenant with a Section 8 Housing Choice voucher from paying the security deposit, and this will not prevent the locality from enforcing its lien rights.

- **Brian Gordon** noted that this bill strikes a nice balance between the interests of the local government and water authorities and the interests of property owners. Water authorities and local governments are able to maintain bond ratings and collect delinquent payments, and property owners are protected by ensuring that the individuals who use the services are held responsible for payment of those services. In particular, the security deposit provision is critical in ensuring that liens are placed in only the rarest of circumstances, and used as a last resort to collect payment.
- **Ralston King**, representing Manufactured Housing Communities of Virginia, Inc., agreed with Mr. Gordon and acknowledged that this bill is a good compromise between all stakeholders.
- **Christie Marra** explained that the VPLC is working with stakeholders to address its concern regarding the amount of the security deposit that may be collected from the tenant. The VPLC is concerned about the scarcity of Section 8 Housing Choice vouchers and the potential that security deposits may make housing cost-prohibitive for those who are unable to obtain the vouchers as well as those who are living just above the poverty line and are ineligible for the vouchers. Ms. Marra suggested capping the security deposit amount at \$100.00, rather than five months worth of services.
- **Chip Dicks** noted that some localities charge security deposits and others do not, but the current law does not limit the amount that a water authority may charge for a security deposit. If a tenant has a Section 8 voucher, the landlord will attach the voucher to his written authorization; this will ensure that localities and water authorities do not have the burden of

proving the tenant's Section 8 eligibility. With respect to the indigent, alternatives that were discussed and dismissed require the locality or water authority to determine a tenant's indigent status. The work group also discussed allowing the tenant to pay the deposit in installments, but that would essentially force the tenant to pay twice the amount of the monthly water bill for two to three months. Alternatives that were discussed in the work group proved to be impractical, and this proposal is the best compromise between interested parties.

- **Senator Whipple** noted that many of those who are indigent have already been vetted by the local government and a local rent relief certificate in some form. If a locality already has a similar program in place, then proof of the tenant's indigent status can be administered in the same way as a Section 8 voucher.
- **T.K. Somanath** suggested that those earning less than 30% of the median income, which is the test to qualify for affordable housing, could be the way to frame an exemption.
- **Chip Dicks** explained that stakeholders were concerned with creating a new, independent process to determine the exemption. Requiring the water authorities or localities to determine a tenant's indigent status would be extremely difficult administratively. If there is some outside determination that a tenant is indigent and there is an authorization that can be attached, that is something that can be accommodated.
- *Senator Whipple moved to endorse the bill with the understanding that there be further exploration into whether existing local programs that evaluate the indigent status of a person may be incorporated into the bill. The motion was properly seconded, and all were in favor. Delegate Marshall will be the chief patron of the bill, and Delegate Dance will co-patron.*
- **Foreclosure on Liens for Unpaid Assessments (2)**
 - **Pia Trigiani**, with MercerTrigiani, explained that the first proposal seeks to allow sales of foreclosed condominium units subject to the first deed of trust. A 2003 Virginia Supreme Court ruling stated that proceeds from a foreclosure sale of a condominium must first satisfy superior liens under the Condominium Act before the Condominium Owners' Association may satisfy an assessment lien. Superior liens can include real estate tax liens, liens recorded prior to the assessment lien, and amounts owed on any first mortgages or first deeds of trust recorded prior to the assessment lien.
 - **Matt Bruning**, with the Virginia Bankers Association (VBA), asserted that the bill allows a property owners' association to sell the property in a non-judicial sale without paying off the mortgage lender's prior deed of trust. The VBA opposed the bill on the grounds that the legislation would, in the words of the court, "put the institutional lender holding the first deed of trust at a serious disadvantage with respect to its ability to protect its security interest in the condominium unit."
 - There were no motions on the bill.

- **Pia Trigiani** explained the second proposal, which is a bill to amend the Property Owners’ Association Act to allow associations to enter vacant property where a violation exists and take corrective action to ensure the property is maintained properly, charging the owner of the property for the maintenance repairs. This is currently allowed for condominium units by the Condominium Act.
- **Matt Bruning** opposed the bill on the grounds that other property owners are not as impacted by failure to maintain the property as those in a condominium unit, and suggested limiting the amount that could be charged to the owner for repairs. Stakeholders acknowledged that they are continuing to work on the bill to reach a consensus.
 - There were no motions on the bill.
- **Previously Approved Commission Bills**
 - **Delegate Cosgrove** noted that the Commission had previously agreed on the following bills: Accounting for Rental Payments, Prohibition on Self-Help Eviction, Mortgage Loan Originator; Owner Financing, and the Timeshare Act.

V. Public Comment

- There was no public comment

VI. Adjourn

- **Delegate Cosgrove** recognized this meeting as Senator Whipple’s last, and commended her for her service to the Commonwealth:
 - **Senator Mary Margaret Whipple** has been a member of the Housing Commission since 2000. She has been a tireless advocate for affordable housing—Thelma Drake asked her to chair the Affordable Housing Group with Bill Mimms and she gladly accepted the challenge.
 - She brokered SB 273 within Arlington County in 2006--the height for affordability bill—a good start toward other ADU affordable dwelling unit bills. She has championed the Housing Trust Fund and brought it to the attention of the General Assembly numerous times.
 - Appointed by former chair, Terrie Suit, to chair the Common Interest Communities Workgroup, she provided oversight on establishing a Common Interest Communities Board and played a great role in providing oversight for Common Interest Communities being protected from unscrupulous managers.
 - Her interest, dedication and work toward improving housing for all Virginians has been incredible and her willingness to work across the isle for the best outcomes admirable. She has been a valuable Virginia Housing Commission member and her presence will be missed.
- The meeting was adjourned at 12:10 p.m.



VIRGINIA HOUSING COMMISSION

AGENDA

Affordability, Real Estate Law, and Mortgages Work Group House Room C, General Assembly Building July 19, 2011, 10:00 A.M.

Members Present: Delegate Glenn Oder, Delegate Daniel Marshall, Mark Flynn, Judson McKellar, Kelly Horne, Brian Gordon, J.G. Carter, Connie Chamberlin, Alexander Macaulay, Chip Dicks, R. Schaefer Oglesby, Tyler Craddock, and Joe Hudgins for Robert Bradshaw

Staff Present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate Glenn Oder**, *Chair*
 - The meeting was called to order at 10:09 a.m.

II. Manufactured Home Titling

- **Tyler Craddock**; Executive Director, Virginia Manufactured and Modular Housing Association (VMMHA)
 - **Tyler Craddock** introduced himself and thanked the work group for its consideration of the problems involving manufactured home titling. The impetus for coming before the Commission and preparing the proposal, came from one of VMMHA's members, Wells Fargo.
 - **Tyler Craddock** explained that the proposal describes a method by which a manufactured home can be titled as real property, and at a later date the home can revert back to personal property and be removed from the land to which it had previously been attached. He acknowledged that the proposal will interest stakeholders for a number of reasons.
 - **Tyler Craddock** explained that although he believes most stakeholders will likely agree with the proposal, namely, providing a clear, marketable title for all manufactured homes in Virginia, he recognizes that there are logistical issues that need to be addressed. VMMHA continues to consider the legislation to ensure there are no unforeseen negative impacts on its members. The issue was brought the Commission's attention to provide all stakeholders with an opportunity to review any issues regarding the proposed legislation.

- **Tyler Craddock** then introduced Marc Lifset of McGlinchey Stafford PLLC, who presented the proposal in greater detail.
- **Marc Lifset**; McGlinchey Stafford PLLC
 - **Marc Lifset** explained that the goal of the proposed legislation is to improve Virginia’s statutory conversion procedure to characterize a manufactured home affixed to land as real property. Part of the problem with the current conversion procedure is the need for capital for financing manufactured homes. Investor eligibility guidelines for purchasing low-interest loans secured by manufactured homes and land are dictated primarily by Freddie Mac and Fannie Mae. In determining those guidelines, Freddie Mac and Fannie Mae look for state law that provides a clear conversion procedure where the title document is eliminated, the home is installed in accordance with the state’s installation procedures law, land-home properties are encumbered by a mortgage or a deed of trust, there is an American Land Title Association manufactured housing endorsement and a title insurance policy can be issued, and the policy can be enforced by traditional foreclosure methods.
 - Major issues with manufactured home titling in Virginia derives from ignorance in the past on the proper method of titling homes affixed to real estate. The problem occurs with an existing home affixed to a permanent foundation that is being taxed as real estate, where a title has never been issued or surrendered, and the manufacturer’s certificate of origin or certificate of title is unavailable. This essentially renders the title unmarketable. Most major lenders will not lend against that type of property; a homeowner cannot sell, and a purchaser cannot obtain title insurance.
 - **Mark Flynn**, of the Virginia Municipal League, asked for clarification of the issue Mr. Lifset had just raised. The manufactured home has a certificate of origin and title through the Department of Motor Vehicles (DMV) until the home is converted by the owner to real estate.
 - **Marc Lifset** responded that in Virginia, the purchaser has to first obtain a title to the home, and then surrender that title. In many other states, with a first retail sale, the purchaser can obtain the manufacturer’s certificate of origin from the retailer and surrender that instead. In Virginia there is a two-step process: the purchaser has to obtain title and then surrender the title.
 - **Mark Flynn** expressed his concern over the availability of manufactured housing to disabled veterans. Manufactured homes that are still classified as personal property are not available to a disabled veteran for tax relief, but manufactured homes that have been converted to real estate are eligible for the tax credit.
 - **Delegate Marshall** asked Mr. Lifset about the tax difference between the current law in Virginia and the proposed legislation; specifically, whether localities will lose money.
 - **Marc Lifset** replied that the proposed legislation is tax neutral.

- **Delegate Marshall** asked how the proposal would affect the owner of a manufactured house on a rented lot.
 - **Marc Lifset** responded the bill provides that leasehold interests are eligible for conversion if it is subject to a long-term lease. This approach follows Fannie Mae guidelines. Wells Fargo would likely be negotiable on this point and the proposal could be changed to allow for a short-term lease. However, financing will be difficult to obtain without a long-term lease, because lenders do not want to make a loan against the property where the lease is then terminated.
- **Delegate Marshall** asked whether a manufactured house on land owned by the owner of the home is appraised as a stick-built house?
 - **Marc Lifset** replied that in that situation, the manufactured home is appraised in the same way as a stick-built house.
- **Delegate Marshall** inquired about a situation in which the owner decides to replace the existing manufactured home with another manufactured home.
 - **Marc Lifset** replied that the proposal includes a formal procedure by which the home is severed and a land record is created that shows the home is no longer real estate. The new home would be placed on the existing land, the owner would go through the conversion procedure again, and then the home would be reappraised.
- **Delegate Marshall** asked whether the legislation would apply to all manufactured homes and modular homes.
 - **Marc Lifset** answered that the bill would apply only to manufactured homes.
- **Connie Chamberlin**, from Housing Opportunities Made Equal (HOME) asked Mr. Lifset about the purpose of the legislation; whether it is to enable financing for the purchase of the home or for refinancing, or borrowing to create equity.
 - **Marc Lifset** responded that the legislation would help to enable all types of financing. The problem described earlier with existing homes would involve refinancing or consumer-to-consumer sales. There are additional problems as well. Once the title is surrendered to the Department of Motor Vehicles (DMV) there is no record at the DMV that shows the title has been surrendered, and there is nothing in the land records that show the home has been converted to real estate and the title surrendered. This makes the title issues difficult. Another problem involves the informal methods that exist from county to county. This poses a challenge to lenders who not only deal with differences among states, but now also have to deal with the differences among counties within the state. Additionally, with the sale of a new home, it is preferable to allow for a sale where the manufacturer's certificate of origin can be obtained at the sale of the home and surrendered instead of the title.
- **Marc Lifset** clarified that the proposed legislation does not create new law, but rather attempts to strengthen a process that already exists.

- **Delegate Marshall** asked how the interstate sale of a manufactured home is affected by title issues.
 - **Marc Lifset** replied that once the owner has surrendered title and completed the conversion process, the home, along with the land, is treated as a stick-built home and the home and the land are conveyed together by a deed. If the owner sells his home to someone who wants to take it to another state, he would follow the severance procedure to remove it from the real estate, and the buyer would move the home and re-title it in that state.
- **Delegate Oder** asked Mr. Lifset what the proposed legislation would change and why it is needed in Virginia.
 - **Marc Lifset** answered that a problem arises when a manufactured home is affixed to land and taxed as real estate, and there is no title and no certificate of origin. The legislation seeks to create a system where there are parallel records of the home being converted to real property in both the local land records and the DMV's records. Keeping parallel records would allow a title searcher or title company to check on the status of the home and feel comfortable issuing title insurance.
- **Delegate Marshall** explained that when a person buys a vehicle, he pays 3% title tax on the vehicle rather than the 5% sales tax; when a person buys a stick-built house, he pays 5% sales tax. He asked Mr. Lifset how a buyer of a manufactured home is taxed currently.
 - **Marc Lifset** replied that as of today, they buyer would pay a 3% titling tax under the statutory procedure.
- **Delegate Marshall** asked if the 3% titling tax is eliminated by the proposed legislation, whether the buyer would then pay the 5% sales tax.
 - **Tyler Craddock** responded that he is not sure what taxes will be paid under the proposed bill, but assured the Commission that the legislation is not intended to negatively impact tax money that counties currently receive. This is an issue to keep in mind going forward.
- **Marc Lifset** reiterated that in ten years the legislation will be tax neutral, and if the bill needs to be changed so that the same tax is levied when the title is turned in, his clients have no objection to that change.
- **R. Schaefer Oglesby**, with Virginia Association of Realtors (VAR), described his personal experience with manufactured housing taxes. He purchased a manufactured home that was affixed to land and converted to real estate. When the title was transferred to him, the DMV collected the tax. If a certificate of origin takes the place of the title for surrender purposes, some type of safeguard should be included in the bill to ensure the appropriate taxes are still collected.
- **Mark Flynn** asked Mr. Lifset whether he has any evidence of the tax neutrality of the bill. He inquired if an issue exists where a manufactured home is taxed as personal property, and the rate is much higher than traditional real estate. The depreciation rate on the unit brings down the

value pretty fast. With real estate, there is a lower rate but the manufactured home is valued differently. He inquired whether this is a factor for tax neutrality.

- **Delegate Oder** assured Mr. Flynn that he expects Mr. Craddock is fully aware that under the proposed bill there are tax implications that need to be resolved.
- **Marc Lifset** continued his presentation by providing an overview of the entire proposed legislation. It focuses on “HUD Code” homes, which are homes that are manufactured homes constructed in accordance with the HUD Code. These homes are built on a chassis and transported to the site on wheels and axels. Under the legislation, the home is affixed to a permanent foundation, taxed as real property, and the land and home are conveyed in a single real estate conveyance transaction and encumbered in the same way. The home is insured under a standard title policy with an ALTA 7.1 manufactured housing endorsement, and the deed of trust is enforceable under state real property law. There is evidence of the chain of title and lien priority in local land records as well as personal property records, and the legislation integrates the two records with existing law.
- **Marc Lifset** described the formal steps for converting a home. First the home is affixed to a permanent foundation in accordance with federal and state installation standards. An affidavit of affixation is executed by the homeowner and recorded in the land records of the county where the home is affixed. This declares the homeowner’s intent for the home to be considered a permanent fixture to the real estate, and would include a description of the home. Then any existing title documents and security interests are “retired,” or accounted for; any security interests on the home as personal property would have to be released and the title or manufacturer’s certificate of origin surrendered to the DMV. Finally, this process is done by filing a copy of the recorded affidavit of affixation along with the manufacturer’s certificate of origin or the certificate of title with the DMV.
- **Marc Lifset** explained the key defined terms in the proposed legislation. The definition of “manufactured home” in the bill is the definition of “manufactured home” that exists in the HUD Code and the Virginia Uniform Commercial Code. “Affixed to a permanent foundation” is defined as a foundation that is constructed in accordance with local law and state installation standards, properly installed and inspected, and hooked up to utilities.
- **Marc Lifset** reiterated that the goal of the legislation is for a home affixed to land to be classified as real property where the owner of the home owns the land as well or occupies the land under a long-term lease.
- **Mark Flynn** asked Mr. Lifset if the bill contains a definition of “long-term.”
 - **Marc Lifset** responded that he believes “long-term” means a minimum of 20 years. He explained that investor guidelines typically require a long-term lease on a converted manufactured

home and land to run at least five years longer than the term of the financing. However, lenders will communicate their particular guidelines to homeowners who want to obtain financing for a long-term lease.

- **Marc Lifset** explained another feature of the bill, which deals with the time the security interest is perfected in lien priority. Under existing Virginia law, lien priority is determined by the First-To-File Rule; the first person who files his application with the court to put a lien on the certificate of title is the first lien holder. However, there are a variety of delays that can arise in the titling process, and there are situations in which homeowners would take out a loan and file bankruptcy shortly thereafter. In that instance, the trustee in bankruptcy would prevail over the lender in terms of lien priority.
 - To combat this problem, there is a provision in the bill that says between a purchase money security interest lender and a lien creditor, such as a bankruptcy trustee, the purchase money security interest lender would prevail on a priority claim. This is intended to protect the integrity of the financing process.
 - This provision is in place in New York, Missouri, Nebraska, and North Dakota, and it seems to be working very well. Additionally, following the bill, state-specific legislation has been drafted and passed into law in North Dakota and Missouri. The bill has also served as a model for key modifications to the manufactured home titling laws of Colorado, Iowa, Louisiana, Nebraska, and Tennessee. This draft of the legislation has also been introduced or is under consideration in Alaska, Illinois, Maryland, New York, Mississippi, and Ohio.
- **Chip Dicks**, with VAR, asked Mr. Lifset a question with respect to zoning. A number of localities have requirements where you have to get a special exception or a special use permit to have a manufactured home. Does the legislation address the immersion from personal property into real property and what is its effect on the zoning requirements of the locality with respect to special exceptions and special use permits?
 - **Marc Lifset** answered that the legislation provides that once the conversion procedure is completed, the home is treated as real property for all purposes. However, the bill is zoning neutral, so any rules that are in place currently or introduced in the future would continue to apply.
- **Chip Dicks** asked about the relevance of Chesterfield County's special exception process, which requires a special exception every five years for any manufactured home. Since the legislation is zoning neutral, he assumed it would not change the position of the locality, the property owner, or the manufactured home owner and they would still need to go through the same special exception process.
 - **Marc Lifset** replied that they would indeed still participate in the special exception process.

- **Chip Dicks** asked whether there are Uniform Statewide Building Code requirements that apply to the installation of a manufactured home, and if a Building Code official would inspect the property upon completion of the installation to determine that it complied with the Building Code.
 - **Marc Lifset** responded that yes, that is correct. At the end of the installation process state law requires a certificate showing the home was properly installed and the inspection was certified.
- **Chip Dicks** asked how the legislation deals with landlord-tenant situations where the landlord owns the land on which the tenant's manufactured home is affixed. Under current landlord-tenant procedures, the landlord can dispossess the tenant from his property if he fails to pay lot rent. He asked Mr. Lifset whether the legislation changes this procedure, and whether the landlord is evicting the tenant from the lot alone, or the lot and the home since collectively they are classified as real property. Additionally, he asked Mr. Lifset what the status of the lender is upon eviction of the tenant from his property. Assuming the perfected security interest of the lender has priority over the landlord, he wondered if it would be difficult for the landlord to evict the tenant if the landlord is in a subordinate position to the lender, and asked what responsibility, if any, the landlord owes the lender
 - **Marc Lifset** asked Mr. Dicks under current procedure, when the homeowner goes through the title surrender process, whether there is a requirement that the homeowner own the real estate.
- **Chip Dicks** responded that under the current process, if the tenant fails to pay rent, the landlord can evict the manufactured home off his lot. He asked Mr. Lifset how landlord-tenant issues will be resolved under the new conversion process.
 - **Marc Lifset** answered that in that situation, the lender has security in two forms: a lien against the home and a lien against the leasehold interest, which would be subject to the landlord's rights. The landlord has no rights in the home other than what he can gain by way of enforcing his landlord's lien. The legislation would not change this; the process of dispossessing the tenant would be the same.
- **Chip Dicks** pointed out that although the legislation does not contemplate any change with respect to that situation, if the courts were to rule that the lot owner no longer had a right to evict the manufactured home from the lot because it has become real property, then that would dramatically change the landlord-tenant laws as they exist today.
 - **Marc Lifset** reiterated that the goal is not to change landlord-tenant laws, and if there needs to be clarifying language that addresses that situation he has no objection.
- **Chip Dicks** asked Mr. Lifset what he thinks the law should be, based on his experience in other states, with respect to that circumstance. He asked whether the lot owner should be able to dispossess the entire manufactured home from the lot.

- **Marc Lifset** answered that the lot owner should indeed be able to evict the manufactured home from his lot for failure to pay rent.
- **Delegate Oder** agreed.
- **John Rick**, with VMMHA, acknowledged that there are two types of landlords: the owner of a manufactured home community (formerly known as a mobile home park) who rents out lots of land to which the homes never become permanently attached, and the owner of a piece of land who typically rents to a friend or family member. In the former situation there is no realty status, but in the latter situation, there may be a realty status because the home may become affixed to the land. He suggested one solution is to exempt manufactured home communities from the effects of the bill. Typically, the homes in a manufactured home community are under leases with one-year terms, and the homes are therefore not given realty status.
- **Marc Lifset** explained that the bill currently requires the written consent of the landlord for a home under leasehold status to be eligible for the conversion procedure. Therefore the landlord is in the position to include appropriate terms in the lease to address this type of situation.
- **Delegate Oder** expressed his concern for landlords of subdivisions made up entirely of manufactured homes that are permanently affixed to the land and intend to remain on that lot indefinitely. The homes in these subdivisions are purchased and sold like the houses in a subdivision of stick-built homes.
- **Delegate Marshall** asked if the key defined term “affixed to a permanent foundation” is already in the Virginia Code.
 - **Marc Lifset** replied that that “affixed to a permanent foundation” is not defined in the legislation because Virginia state law already defines that term.
 - **John Rick** explained that the surrender statute in the Virginia Code, § 46.2-653, explains when a manufactured home is deemed real estate. The Virginia Uniform Statewide Building Code has defined a permanent foundation as a cinderblock wall, piers (which is what most manufactured homes are affixed to), or wooden pylons.
- **Connie Chamberlin** asked Mr. Lifset for clarification regarding the bill’s effect on the bankruptcy process and landlord-tenant issues, and whether manufactured housing is protected or exempted under the legislation.
 - **Marc Lifset** answered that the manufactured home would be part of the tenant’s bankruptcy estate, and would therefore be treated no differently than a stick-built home on a leasehold interest. There is an examination to determine whether the tenant is planning to reinstate the lease by bringing it current or reject the lease and allow himself to be dispossessed. Mr. Lifset explained that he is unaware of any circumstances in which the home would be exempt. The manufactured home is treated as real property under the Bankruptcy Code, and the homeowner has the same rights and obligations as any real property owner.

- **Connie Chamberlin** asked how this bill would change the impact on the tenant.
 - **Marc Lifset** explained that the bill would not change the bankruptcy treatment of a manufactured home that has been converted to real estate. However, it would change the bankruptcy treatment of a manufactured home that is not converted into real estate by requiring the homeowner to honor the obligations on the home in full instead of permitting him to modify the lien in what is known as a “cramdown.”
- **Delegate Oder** asked Mr. Craddock what he would like to see the Commission do with his proposed model, and whether he has been working with DHCD and the Virginia Housing Development Authority (VHDA) on this issue.
 - **Tyler Craddock** answered that the VMMHA has brought this issue to the attention of nearly every interested group. He explained that VMMHA wanted this issue to be heard before the work group on behalf of its member, Wells Fargo, so that concerns from all stakeholders could be discussed and any unforeseen consequences determined, such as the tax issues Delegate Marshall and Mr. Flynn pointed out. He admitted that some of the logistical concerns are still being considered, such as what impact this bill might have on retailers, but that those issues should be resolved shortly by the group.
- **Delegate Oder** recommended the proposal be drafted as a Virginia bill, so that by the next meeting there is a bill draft. He also recommended holding another work group meeting before the next full Commission meeting so that if all the issues are reconciled the bill can be presented to the full Commission in September. He further recommended drafting the bill to be more concise, and to address any current problems that exist in Virginia. He pointed out that this bill could have unintended tax, foreclosure, and zoning consequences, and they need to make clear exactly what problems the bill resolves.
- **Delegate Marshall** asked that Mr. Craddock send a copy of the bill draft to work group members before the next meeting.
- **Delegate Oder** asked Mr. Craddock to include input from DHCD and the Manufactured Housing Board when drafting the bill.
- **Chip Dicks** suggested discussing the dual filing process in more detail at the next meeting, which will likely interest Clerks of Court and the Tax Department.
- **Bill Shelton**, the director of DHCD, asked that the DMV be included in that discussion as well.
- **Mark Flynn** asked that the zoning impact also be discussed at the next meeting.
- **Delegate Oder** encouraged Mr. Craddock and his participating organizations to meet with all interested parties and discuss potential

consequences to their interests before the next meeting to be held September sixth.

III. Manufactured Home Installation

- **Mary Brown**; Manufactured Home, owner
 - **Mary Brown** described how she spent \$23,000 on a new, four-bedroom manufactured home and lived there for seven years. She claims the home was not set up properly, and as a result, water leaked into the home through the roof and ruined the home. She is no longer able to live in the home.
 - **Delegate Oder** explained to Ms. Brown that this is an issue that is covered by the Manufactured Housing Board at Department of Housing and Community Development (DHCD), and asked her if she had been before them.
 - **Mary Brown** responded that she went to DHCD's Board. They inspected the property and made an award, but she does not feel it is adequate.
 - **Delegate Oder** asked Ms. Brown if she has sought legal advice since she was dissatisfied with the response from the Manufactured Housing Board.
 - **Mary Brown** said that she had, but none of the lawyers she met with would take her case.
 - **Delegate Oder** asked Ms. Brown if she had been to Legal Aid.
 - Ms. Brown replied that she had, but was told there was nothing they could do; the issue arose eleven years ago. She added that both her mother and friend have had similar issues with their own manufactured homes.
 - **Delegate Oder** inquired whether all the homes were from the same manufacturer.
 - **Mary Brown** replied that they had all come from the same retailer.
 - **Delegate Oder** explained to Ms. Brown that the Commission is responsible for reviewing legislation, not individual cases. He asked her what she wanted the Commission to do to help.
 - **Mary Brown** asked that manufactured homes be looked into more carefully before laws are passed. She summarized that she feels the manufactured home companies are continually going out of business and filing bankruptcy; this creates a problem for consumers.
 - **Delegate Oder** suggested that perhaps that issue is something that the Commission could look into at a future meeting. He explained that although he empathizes with her situation, there is nothing he can do to help resolve her situation. He offered his sympathy for her plight, but he stressed that he is just not equipped to solve her problem.
 - **Delegate Marshall** asked Ms. Brown whether she purchased the home from the same company that installed the home or if the home and the installation service were purchased separately.
 - **Mary Brown** replied that she purchased both the home and installation together from the same company.

- **Delegate Oder** asked Ms. Brown if there is anything else she can think of that the Commission can look into at a future meeting.
- **Delegate Oder** advised Ms. Brown to go back to Legal Aid to see if they are able to resolve her issue.

IV. SB 830 Fair Housing Law (Locke 2011), and HB 1578; Fair Housing Law (Dance, 2011)

- **Chip Dicks**; Manager, FutureLaw, LLC
- **Mark Flynn**; Director of Legal Services, Virginia Municipal League
 - **Delegate Oder** noted that the Housing Commission considered this bill last year. It went before the General Assembly, the response was not favorable, and it was subsequently sent back to the Commission for further consideration.
 - **Chip Dicks** elaborated on the history of the bill. Last year, the Housing Commission worked on the language of the bill to adequately address the concerns of localities and other parties. However, once the bill went before the General Assembly, members expressed concerns that localities' input in the zoning process would be compromised. In terms of dispersal of affordable dwelling units, they were concerned that when a case goes through the zoning process, the citizens of the community would want to know whether the building was going to operate as a Low-Income Housing Tax Credit property and if the owner would accept Section 8 units or if they were intended as market-rate units. Ultimately, legislators felt that the ability of localities and communities to participate in the zoning process or other land use regulatory processes would be compromised. As a result, the Housing Subcommittee felt this issue needed further study, and asked for clarification regarding what existing problems the legislation sought to fix.
 - **Mark Flynn** explained that the fundamental concept of this legislation is that localities should not discriminate against affordable housing. The problem with the bill is that localities have a legitimate purpose in community planning and approving areas for affordable housing. The localities' interest in planning extends beyond affordable housing to every kind of land use, including manufacturing and commercial uses. Last year's discussions involved whether the language in this bill could be used against localities that are engaged in a legitimate zoning process. The language could be perceived to say that in fact discrimination against affordable housing is a factor in the zoning process. While local governments have no issues with the concept of the bill, the language should accommodate the legitimate goals of localities. Another more technical issue is which section of the Code should be incorporated to reach the goal. This particular section deals with someone refusing to negotiate for the sale or rental of a dwelling based on race, color, religion, national origin, sex, elderliness, or familial status. Subsection B changes the scale of this section of the Code, focusing it on affordable housing in general as opposed to the protected classes.
 - **Delegate Oder** asked Mr. Flynn if he has had the opportunity to discuss the bill with Senator Locke or Delegate Dance.

- **Mark Flynn** answered that he had not spoken with either of them about this bill yet.
- **Delegate Oder** asked Mr. Flynn whether he would be amendable to a discussion of the bill with the legislators.
 - **Mark Flynn** answered that he would confer with them about the bill.
- **Delegate Oder** noted that last year the Housing Commission sent this bill to the General Assembly without these concerns, but when it went before the subcommittee these concerns were raised by several of the members. Now is the time to either fine-tune the bill or ensure it doesn't come up again. He asked Mr. Flynn and Mr. Dicks to spend some time meeting with Senator Locke and Delegate Dance and redraft the bill to address those concerns that were raised in subcommittee. He asked Mr. Dicks whether he had any other concerns regarding the bill.
 - **Chip Dicks** answered that he agreed with Mr. Flynn that the language should be redrafted in a different section of the Code. There was also a concern raised in subcommittee about the fact that the language, as drafted, takes away a significant authority from localities. The localities want to have the freedom to decide that there are sufficient Low-Income Housing Tax Credit projects and enough affordable dwelling units in regular developments so that it can build a market-rate housing project. Localities want the authority to provide citizens with market-rate units when they are requesting that type of housing. Everyone on the Housing Commission agrees there should be no discrimination of protected classes with respect to housing. As was pointed out last year, the current law already prohibits discrimination. Another issue is that localities want the authority to prohibit a developer from introducing Section 8 housing into a development if he is unable to achieve occupancy.
- **Delegate Oder** asked Mr. Dicks and Mr. Flynn to meet with Senator Locke and Delegate Dance to resolve the matter so that the Commission can determine whether or not to endorse the bill again this interim.

V. Public Comment

- There was no public comment.

VI. Adjourn

- The meeting was adjourned at 11:20 a.m.

COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair
SENATOR MAMIE LOCKE, Vice Chair
ELIZABETH A. PALEN, Executive Director



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VIRGINIA HOUSING COMMISSION

AGENDA

Affordability, Real Estate Law, and Mortgages Work Group/Neighborhood Transitions and Residential Land Use (Joint Workgroup Meeting) House Room C, General Assembly Building September 6, 2011, 10:00 A.M.

Members present: Delegate John Cosgrove, Delegate Rosalyn Dance, Delegate Daniel Marshall, Senator Mary Margaret Whipple, Delegate David Bulova, Mark Flynn, T.K. Somanath, Judson McKellar, Kelly Horne, Robert Bradshaw, Brian Gordon, Connie Chamberlin, Alexander Macaulay, Chip Dicks, Kelly Harris-Braxton, R. Schaefer Oglesby, John Jordon, Tyler Craddock, Barry Merchant, Michael Toalson, Bill Ernst, and Ted McCormack

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate Dance** called the meeting to order at 10:07 a.m. and asked members of the work group to introduce themselves.

II. Update on Manufactured Home Titling

- **Tyler Craddock**, Executive Director, Virginia Manufactured and Modular Housing Association (VMMHA)
 - VMMHA has been working with major stakeholders, including the Department of Motor Vehicles (DMV) on the issues surrounding manufactured home titling. Marc Lifset, of McGlinchey Stafford is here on behalf of Wells Fargo, and he will explain these issues.
- **Marc Lifset** introduced himself, and began his presentation by describing problems with the current system of titling manufactured homes.
 - First, unmarketable titles on existing manufactured homes make it impossible for the current owner to refinance at a lower interest rate, and for a new buyer to obtain financing to purchase the home. The title is unmarketable if the process of converting a manufactured home affixed to a permanent foundation to real estate was not properly followed initially. Lenders require title insurance on the home before providing financing, as well as an ALTA 7.1 endorsement, which ensures that the title is marketable. This poses a problem for sellers and buyers of used

DELEGATE DAVID L. BULOVA
DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR MARY MARGARET WHIPPLE

MARK K. FLYNN
T.K. SOMANATH
MELANIE S. THOMPSON

manufactured homes, as well as current owners seeking to refinance. By providing a clear and coherent procedure for titling manufactured homes, those homes will not only hold their value, but also increase in value over time.

- The second major issue with the current system of titling affects manufactured home owners seeking to upgrade their homes. Owners with equity in their manufactured home often trade in their current home for a larger or more energy efficient home. Currently, there is no process in Virginia for re-titling a manufactured home that has been severed from real estate.
- A third feature of the proposed legislation is the ability to surrender the manufacturer's certificate of origin (MCO) at the first retail sale rather than using the MCO to apply for a title and then surrendering it, as is the current procedure. Additionally, the proposal provides for official public records with the DMV as well as the local land records to show that a manufactured home affixed to land has been converted to real estate. Including this in the local land records ensures the marketability of a manufactured home title.
- **Mark Flynn** inquired whether the legislation provided for a dual titling process.
 - **Marc Lifset** responded that it did not, and explained the recording process under the proposal. At closing, the buyer will receive a deed in the property and sign a deed of trust for the lender, and then the closing agent will prepare a document known as an affidavit of affixation, which states the homeowner's intent for the home to be treated as real estate. The affidavit of affixation is recorded in the land records along with the deed and the deed of trust. A certified copy of the affidavit is then delivered to the DMV with either the title or the MCO. To obtain the ALTA 7.1 manufactured home endorsement to a title policy, the title company is ensuring that there are no personal property liens on the home that would impair the title. In order to comfortably do this, the title company would need to look in both the personal and real property records.
- **Connie Chamberlin**, from Housing Opportunities Made Equal (HOME), asked Mr. Lifset about the bankruptcy implications of the proposal.
 - **Marc Lifset** replied that the conversion procedure is not mandatory, and that homeowners will be able to choose whether to convert their manufactured homes to real estate.
- **Connie Chamberlin** inquired whether a homeowner would understand the implications of converting his home to real estate.
 - **Marc Lifset** acknowledged that homeowners would not understand this option without some education on the matter. He added that there are states that include in the procedure a disclosure regarding rights and obligations for homeowners when deciding whether to do chattel or real estate financing. Although a disclosure is not included in this proposal, it could be added to the draft.

- **Mark Flynn** mentioned that if the homes are converted to real estate rather than titling the home as personal property, the debtor benefits from the Homestead exemption.
- **Delegate Marshall** asked Mr. Lifset to further explain the option of the homeowner to convert the property to real estate. Until this point the work group was under the impression that the legislation would be mandatory and would apply to the titling process of all manufactured homes.
 - **Marc Lifset** answered that in order for the home to be real estate, it needs to be placed on a foundation and installed according to law; the law is modeled after the HUD code currently in place in Virginia. An owner buying a home can do one of two things, 1) can get a title and leave the home titled as personal property or 2) treated as real property and then the title would go through the surrender procedure.
- **Delegate Marshall** asked what the proposed legislation is to accomplish if an option is offered that already is currently in the Code of Virginia; he mentioned that he titles his car, would a person need to title as realty in order to receive financing?
 - **Marc Lifset** said that option exists in current law, nothing that says a person needs to surrender the title, just trying to improve the process
- **Delegate Marshall** noted that if then when the consumer was buying he would probably be forced into taking the realty option in order to secure financing.
 - **Marc Lifset** said there are lenders who finance manufactured homes with out title surrender, important to them that there be an option, would not say consumer forced to have their homes converted to real estate; but those loans are purchased by Fannie and Freddie and this gives the borrower access to that capital and those rates.
- **Delegate Marshall** asked if he so chooses this option would he get the lower interest rate; and the response was yes.
 - **John Ricks**, an attorney for Manufactured Home Association, said that he believes that there is some confusion in existing Virginia law. He said that if a manufactured home is put on a permanent foundation, the owner has the option now to surrender the title to DMV. If the statute says thereafter the home treated as real estate, in simplified form, the DMV takes those titles and the owner comes back a few years later asking for a new title and DMV says no you surrendered it; suggestion is to allow a reissue if they go they go back to DMV and have DMV keep a record of the transaction.
- **Delegate Dance** inquired if perhaps only a simple fix is needed for this proposed legislation instead of a more complicated bill?
 - **John Ricks** answered that yes, it seems this would address the problem.
- **Chrissy Tomlin**, a loan officer for Wells Fargo, said she is a specialist in manufactured home financing; most loans go through FHA and they require a surrender of title or the person can't get financing. It is necessary to surrender the title in order to get financing and to get lower loan rates. HUD would never have been able to sell foreclosures if there were not titled homes; isn't much of an option for titling if you want to take advantage of conventional financing.

- **Delegate Marshall** wondered as far as tax when a surrender of title takes place does the tax rate change.
 - **Kristee Kelly**, from Virginia Manufactured Housing Title, LLC., said that as the rate changes, the owner pays more taxes in the long run and the house valued at a lesser amount than it would if realty.
- **Delegate Marshall** asked what percent is left as personal property. If the personal property depreciates, does the tax decrease on the homes?
 - **Kristee Kelly** replied that most personal property exchanges are done as cash purchases and most lenders require the title to be surrendered and converted; her company gives purchasers a copy of the DMV title so they can convert it to realty. She would assume that the value does decrease; can't imagine it being beneficial to the buyer to allow the home to remain personal property.
 - **Mark Flynn** said there is an impact on tax revenues to localities, whether personalty or realty. And there is an impact on tax revenues for taxes if taxed at a personal property rate versus a real estate rate; it is complicated because homes that are attached tend to appreciate as opposed to personal property. At the last meeting the proponents said they would get some further information and he wonders if they have made any progress in that regard.
 - **John Ricks** noted that there is an annual report at DMV called FIPS; you have to ask DMV for it and go to tax section of DMV, the report tells you on an annual basis, county, and city by city, where the taxes are collected on manufactured homes. The law says the tax goes to the locality where home is cited. Although he hasn't seen that report recently, at times equaled approximately \$3 million dollars in local revenues.
 - The local MLS book, shows that manufactured homes on permanent foundations are appreciating, but they don't appreciate quickly—even in a hot market at the same rate—but they are appreciating and it's not minimal. He wants localities to see there is more revenue there for them than if the homes remain personal property. The Code says homes are taxed as personal property; when the title is not surrendered on manufactured homes, they're personalty and valued like a car, and in five years there is nothing left and the locality loses out on revenues. If the home is on a permanent foundation, it will be assessed as a stick built house, but this still is not completely resolved.
- **Delegate Marshall** inquired if there was any data for homes sold and what percentage are classified as real estate and which are classified as personal property.
 - **John Ricks** replied that no, he doesn't know if that data exists; he has been trying to find that information for older manufactured homes; more homes for sales becoming real estate is his industry's sense, because manufactured homes don't move much unless they are in a home park.

- **Jerry Hackett**, with Clayton Homes, Knoxville, said his company's major initiatives are focused on finding people in homes that have built up equity and encouraging them to purchase a newer home. Now his company is able to pull homes off a piece of property to get better building standards, and if the home is attached to land they cannot do this. If the home is secured to a piece of land with a permanent foundation (and sometimes they are not because people want to stay on particular land because it is family land), but they want a new home on the same land, it then saves costs. This is a major opportunity for his company as well as providing increased taxes for the locality. Taking an older home off property and putting a bigger home that is worth more in its place will have appreciated value. The banks want to finance these homes; it is a win-win situation for everyone involved.
- **Senator Whipple** said her understanding is that his interest is in being able to sell the previous home and she wondered is there a problem achieving that now?
 - **Jerry Hackett** said that you can't obtain financing without a title; if the home is severed from the land they are not able to take that title. In the next two years there will probably be a lot of activity in this area. When they pull that used home off the land, they need to find financing for it; they get a lot of calls for older, used homes, and it is important for them to be able to re-sell.
- **Mike Toalson** urged Tyler Craddock and John Ricks to work with stakeholders and bring a draft back to the group. He expounded that he felt that manufactured housing is a very important component of the housing market and that it is critical that this somehow gets straightened out, and that financing on existing homes is a critical issue for the Commission to resolve.
- **Delegate Dance** asked for Tyler Craddock and John Ricks and the others to work together and once they have a written draft the work group will reconvene and see if there is something to move forward to the full commission.

III. Update on SB 830 Fair Housing Law (Locke 2011), and HB 1578; Fair Housing Law (Dance, 2011)

- **Delegate Dance** explained that various housing groups, including the Virginia Association of Realtors (VAR) and HOME, are still developing improvements to the bill, and it is not yet ready to be heard before the full commission.
- **Senator Whipple** asked for a brief description of the issues surrounding the bill.
 - **Mark Flynn** explained that the legislation was sent back to the Housing Commission for review after failing to pass last session. There were concerns that the broad language in the bill could be used by someone who has a complaint about a zoning action taken by a locality on any project to file a complaint in circuit court to prevent the locality from proceeding with the zoning. He suggested looking at the zoning provisions in Title 15.2 of the Code of Virginia to see if the proposed bill could be included in that title. He also suggested narrowing the language to specify what localities may or may not do in that regard to providing affordable housing.

- **Connie Chamberlin** explained that HOME believes the bill addresses a very real problem, and HOME is happy to work with any interested parties to draft acceptable language.
- There was a consensus that the bill is still being discussed among stakeholders and is not yet ready to appear before the full Housing Commission.

IV. Update on SB 1312; Repair of Derelict Buildings (McEachin, 2011)

- **Jonathan Baliles**, with Planning & Development Review of the City of Richmond, explained that the bill that was introduced by Senator McEachin (SB 1312, 2011) is almost unrecognizable, and has been amended to eliminate any issues that are politically untenable.
- **Delegate Dance** noted that Chip Dicks, representing VAR, was unable to attend the last meeting where this bill was discussed. She asked for his input on the revised bill draft.
- **Chip Dicks** explained that he worked extensively with Mark Flynn and the City of Richmond to craft a bill proposal that accomplished the City's goals without infringing on personal property rights. The original SB 1312 (McEachin, 2011) has been streamlined and structured so that it supplements existing authority localities possess to incorporate the receivership process. This proposal restricts the authority of a locality to take personal property. The structure must be declared blighted by the City, which is a determination made under existing law. Only in that circumstance can a court appoint a receiver to make the necessary repairs to the property. The proposal also includes language that subjects this process to eminent domain under Section 1 to build more protections into the legislation.
- A motion to take up this issue before the full Housing Commission at the afternoon meeting was properly moved and seconded; all were in favor and the motion carried.

V. Virginia Poverty Law Center's Proposed Landlord-Tenant Bills

- **Christie Marra**, with the Virginia Poverty Law Center (VPLC), told the Commission that VPLC had been working with the association of realtors and Apartment Owners Association to address their concerns with the proposed legislation. Ron the concerns raised at the last meeting of the Neighborhood Transitions and Residential Land Use Work Group. She noted that they had made revisions to the proposal applying a prohibition on self-help by landlords to dispossess tenants of a rental property to all residential leases.
- **Chip Dicks** explained that the purpose of the proposal is to ensure that in all residential tenancies, no landlord can physically dispossess residential tenants without going through the lawful detainer process. There is no clear position stated in the Virginia Landlord-Tenant Act (VLTA) applicable to single family houses. This proposed legislation makes clear that the prohibition on self-help is only applicable to residential single family houses, and single family units. The goal is to preserve the right of landlords in a commercial lease to physically dispossess tenants, and disallow this act with regard to residential tenancies. The proposal needs minor language adjustments, but should be completed shortly.
- **Christie Marra** explained the second proposal from VPLC addressing § 8.01-126. The intent behind the proposal is to streamline the unlawful detainer process. This

will add to the Virginia Code a requirement that when a landlord files an unlawful detainer, he must also attach the termination notice that is already required to be sent to the tenant. There are still some minor issues that need to be resolved with regard to this proposal.

- **Chip Dicks** mentioned that the concern regarding this proposal is that the general district courts have moved toward e-filing. Each notice of termination is unique to that particular landlord rather than a standard uniform court form from the court's database, and the court does not have the technology to accept those forms for the purpose of e-filing. There are also concerns regarding additional fees and sheriffs' services.
- **Christie Marra** explained the third proposal from VPLC, which requires landlords to provide tenants with a written receipt for rent payment. The proposal would require a landlord to notify a tenant that the tenant has a right to request an accounting of how his rent payment is applied every month. The purpose of this requirement is to prevent a tenant from accumulating late fees and other charges as a result of those fees are being deducted from each monthly rental payment without the tenant's realization. A consensus on this proposal has not yet been reached among stakeholders.
- **Delegate Marshall** asked Mr. Dicks if there is a Code section that handles accounting and late fees as they pertain to cable and utilities.
 - **Chip Dicks** responded that he is unfamiliar with that area of the law. VPLC is attempting to provide a notification requirement for tenants who do not understand that late fees carry over into each month, and subsequently do not realize they are accruing these fees. From a policy standpoint, it makes more sense to require landlords to notify tenants that they can request a copy of their rental payment records rather than burdening landlords with a requirement to provide this record before any such request has been made.
- **Senator Whipple** inquired whether the concern is with landlords providing notice of the rent payment record or simply providing a receipt. She pointed out that issuing a receipt for rent payment is standard practice for landlords.
 - **Chip Dicks** explained that funds are often collected by landlords electronically. Most landlords will not accept cash for rent payments because of accounting concerns and other issues. Money orders are a common way of paying rent for low-income tenants who do not have access to a bank account or any type of automatic payment. In fact, the General Assembly has adopted legislation permitting landlords to require electronic rent payments to eliminate some of the accounting issues with cash rent payments. This proposal addresses a situation where the tenant does not have access to electronic payment methods. Landlords will be discouraged from accepting money orders for rent if the bill required them to issue a detailed receipt of how the payment was applied every time. However, the tenant should still have an opportunity to review his rent payment history. Requiring the landlord to provide a tenant with a copy of the tenant's rental payment record upon request addresses both of these issues. Additionally, this proposal only applies

to leases under the Virginia Residential Landlord-Tenant Act (VRLTA), and does not apply to single family houses under the VLTA. He indicated that there is more work to be done to the language of this proposal to ensure a consistent standard for both multi family and single family tenants.

- **Christie Marra** mentioned that while accepting only electronic rent payments and issuing a receipt is fairly standard practice, there are landlords who do accept cash and do not issue receipts.
- **Delegate Dance** acknowledged that all three proposals need additional work before being presented to the full Commission.
 - **Christie Marra** agreed that additional revisions are necessary, and informed the work group that a consensus on the language has almost been reached among all stakeholders on the proposal addressing self-help eviction.
- **Delegate Dance** requested that Ms. Marra work with stakeholders on the proposals and present the updated drafts to the full Commission at the November meeting.

VI. Public Comment

- There was no public comment.

VII. Adjourn

- The meeting was adjourned at 11:20 p.m.



VIRGINIA HOUSING COMMISSION

AGENDA

Housing & Environmental Standards Work Group House Room C, General Assembly Building May 3, 2011, 2:00 P.M.

Members present: Senator John Watkins, Delegate John Cosgrove, Delegate Glenn Oder, T.K. Somanath, Mark Flynn, Shaun Pharr, Ed Rhodes, Emory Rodgers, Brian Buniva, Ron Clements, Michael Congleton, Michael Toalson, Sean Farrell, Art Lipscomb, David Freeman, Tyler Craddock, Ted McCormack

Staff present: Elizabeth Palen and Jillian Malizio

I. Welcome and Call to Order

- Senator John Watkins, *Chair*
 - The meeting was called to order at 2:01.

II. Green Buildings Code Update

- Emory Rodgers; DHCD
 - The 2009 Uniform Statewide Building Code (USBC) went into effect March 1 of this year. The 2009 edition of the Code will ratchet up building code requirements related to energy.
 - The 2012 Code achieves 15% energy conservation on use energy which is in line with the Department of Energy's 30% goal.
 - Virginia is adopting conservation and energy efficiency methods through its USBC.
 - The new Code established the framework for allowing the use of rain water, and reclaimed water within the Building Code and established guidance to see if a permit is needed for these systems.
 - The International Code Counsel started development on what will be an International Green Construction Code (IGCC).
 - There were about 900 code changes this cycle.
 - The final version will be approved in the Fall. In 2012 there will be an official public version of the IGCC.
 - States and localities will be able to adopt that Code.

- The Green Building Code will not lack controversy. One of the more contentious points will be which provisions will be mandatory which ones the marketplace can choose to adopt.
- About 40% of the green features fall outside the USBC. These include options related to waste recycling, zoning, the proffer system, special use permits, state building officials, and Leadership in Energy and Environmental Design (LEED) and Green Globe building.
- Based on the new Code requirements, it is expected that if all the Code requirements are met when building new construction, there will be approximately 15% reduction in energy costs. This goes for both residential and commercial properties. The baseline for reduction is the 2006 Building Code.
- **Mike Toalson**; Home Builders Association of Virginia (HBAV)—Urged the DHCD to look at EarthCraft Virginia. It was launched in 2006, and is the most successful statewide Green Building program. There is a market in Virginia that demands EarthCraft houses. Home builders favor a “voluntary code” where builders incorporate Green techniques into their buildings at will. The new building system results in 30% more energy efficiency than the 2006 Code. But, there is a failure in the appraisal industry to recognize the extra expense of incorporating those Green techniques. This includes the national appraisal guidelines, which offers a disincentive for builders.
- **Mark Flynn**; Citizen Member—On a similar topic, open houses in Phoenix, Arizona had booklets that showed the costs for utilities used by the previous owners.
- **Senator Watkins**—There was some legislation that came through two or three years ago that allowed for the utilization of energy use in a real estate market. However, there was no requirement that the owner provide a booklet.
- **Mike Toalson**—People buying a home know what they’re getting into when they buy. The EarthCraft program builders understand that the marketplace is demanding energy efficient housing. Most builders today have enhanced packages they make available to their consumers where people can choose the level of energy efficiency they want to buy.
- **Senator Watkins**—The last five years will raise questions as to how informed buyers really were at that point in time.
- **T.K. Somanath**; Citizen Member—Asked Mr. Rodgers whether the installation of solar panels on buildings is being discussed.
- **Emory Rodgers**—The use of solar panels on buildings is already being incorporated. The IGCC addresses separation and other types of land use decisions. For instance, if you were to plant a tree now, in twenty years it may be casting a shadow over your neighbor’s solar panels. The IGCC won’t have solutions to some of those problems.
- **Senator Watkins**—Asked Mr. Rodgers whether the 2009 adoptions for the USBC came to fruition this past year.
- **Emory Rodgers**—The adoptions went into effect this year. There was a record number of petitions. The original goal was to have the 2009 Code completed by the end of 2010.

- **Senator Watkins**—2012 recommendations are likely to evolve into 2013 recommendations before there are any adoptions at the state level. Asked whether the IGCC is rudimentary insofar as it is not yet being considered.
- **Emory Rodgers**—Responded that they are taking up all the code changes, and there will be a public document ready for localities to adopt in the first part of 2012.
- **Mike Toalson**—There is also a Uniform Code that is adopted by the Commonwealth.
- **Senator Watkins**—Half of the Code does not regulate buildings’ storm water and the impacts on stream flows.
- **Ron Clements**; Virginia Building and Code Officials Association (VBCOA)—The Green Construction Code is being adopted separate from the Building Code. One could argue that probably half of the information in the Green Code could not be adopted into the Building Code. But instead one could take specific Green issues to add to the Code as opposed to adopting the entire Code as proposed.
- **Ed Rhodes**; Virginia Fire Chiefs Association—Asked for a copy of the summary of the Green Codes later this month.
- **Senator Watkins**—Expressed concern about not knowing at this point what will be in the IGCC.
- **Emory Rodgers**—After the hearings he will put together a general overview.
- **Senator Watkins**—Asked Mr. Rodgers to give an update on what exactly will be included in the IGCC to the Housing Commission by late Summer or early Fall.

III. Sustainable Community Planning

- Richard C. Collins; UVA School of Architecture, Professor of Urban & Environmental Planning
 - There is a huge public safety issue regarding underwater mortgages. Unless something is done about the underwater mortgage crisis there are going to be neighborhoods that are in serious decline.
 - We must have faith in the American people: they never used to walk away from mortgages. They have a moral and ethical obligation to pay the debt. This obligation is central to us and the creation of our wealth.
 - He estimates that 20-30% of mortgage walk-aways are strategic. It’s worth more to the owners to walk away than it is to stay in their homes.
 - He mentions two public safety issues: the State of Virginia is impairing contracts in violation of the U.S. Constitution, and the Attorney General is misguided and mistaken, and we are losing social capital.
 - Virginia should take the lead to assess the climate surrounding the authority of the state to do something about this crisis. There is a possibility of people falling into certain mortgage categories.
 - In Florida, foreclosure is preceded by negotiation and mediation. It is likely that this approach will change the climate of foreclosures. The playing field is not tilted, but the rules are skewed.

- **Senator Watkins**—Informed Mr. Collins that the Housing Commission has a mortgage group that deals with the Virginia Housing Development Authority (VHDA) specifically, and that this group would like to hear about sustainability.
- **Richard Collins**—The idea of sustainability is a recognition of a new frugality; we are in a different era. People need to understand the national situation financially, and need to conserve and live more frugally. The concept of sustainability needs to be elevated. Under the public trust doctrine legislators and public officials have more than a responsibility to protect private property. There is an obligation to make sure that the welfare of the people is positively protected. Concepts of rights need to become more strongly embedded, and citizens need to be protected.
- **Senator Watkins**—He assured Mr. Collins that the subject is near and dear to everyone on the Commission, and that he had made a good point about sustainable public trusts. He acknowledged that loan and loss allocations hurt developers, and expressed interest in arriving at a financial system that will not cost us all. He informed Mr. Collins that this discussion is interesting, but they are looking more at areas of concern with regard to sustainable, green housing in Virginia.
- **T.K. Somanath**—New neighborhoods are creating a new fabric connecting people. He asked if there is a way to use the Geographic Information System (GIS) to understand the tipping points.
- **Richard Collins**—He suggested using online websites that can help map areas with potential foreclosures. This problem poses threats to the community, not just the financial center. Virginia doesn't have the energy or the opportunity to incorporate a community land trust.
- **Senator Watkins**—He asked Mr. Collins whether Weldon Cooper is involved in housing valuations.
- **Richard Collins**—He responded that they are capable, but he doesn't believe they are deeply involved in valuing houses. He suggested a Virginia consortium involving face-to-face discussions. He further suggested transfer of development rights (TDR) programs to use community land trusts, and expressed the need for a revision of state law deficiencies with a convener that will drive the issue.
- **Senator Watkins**—When the Housing Commission met last week, data was presented from the Federal Reserve Bank of Richmond, the Virginia Department of Housing and Community Development (DHCD), the VHDA, and HBAV. He asked staff to contact Weldon Cooper and get feedback regarding housing valuations. There is a home equity line of credit (HELOC) issue, and the Commission needs to get a handle on the magnitude of the problem.
- **T.K. Somanath**—As a member of the Governor's Foreclosure Task Force, he believes they should be engaged in this too.
- **Senator Watkins**—He asked for a presentation from the Attorney General's office. The presentation should include what their proposals are with regard to foreclosures, and what the objections and agreements are from the national Attorneys General. The Commission needs to understand the situation,

especially with housing values still on the decline and after hearing the data from the Federal Reserve Bank at the last Commission meeting.

IV. Public Comment

- There was no public comment.

V. Adjourn

- The meeting was adjourned at 3:15 P.M.



VIRGINIA HOUSING COMMISSION

MEETING SUMMARY

Common Interest Communities Work Group House Room C, General Assembly Building May 2, 2011, 1:30 P.M.

Members Present: Senator Mary Margaret Whipple, Delegate John Cosgrove, Melanie Thompson, Janice Burgess, Mike Inman, Chandler Scarborough, Pia Trigiani, Chip Dicks, Jerry Wright, Trisha Henshaw, Heather Gillespie, Joseph Hudgins, Tyler Craddock, Michael Toalson

Staff present: Elizabeth Palen, Jillian Malizio

I. Welcome and Call to Order

- **Senator Mary Margaret Whipple, Chair**
 - The meeting was called to order at 1:35 P.M.

II. Bank-Owned Abandoned Condominium Foreclosures

- Senator Whipple received an email from a constituent explaining there is a unit in his condominium building that has been abandoned for four years (the owner has left the state). The county is unable to foreclose on the unit because the bank is paying the county taxes. She is concerned the condominium association is affected by the abandoned unit because the association's fees are not being paid. The constituent hopes they can be included in the work of the Foreclosure Task Force and this issue can be brought forward to the attention of the Housing Commission.
- Chandler Scarborough, of Green Run Homes Association, explained that this is a big issue for condominium associations since the fees go toward insurance, grounds maintenance, etc. If one homeowner doesn't pay his share, the others will have to pay higher assessments. The association has no control over financial risk. There is no screening process for members when they buy a unit. Associations have no advance control over the credit worthiness of the buyer.
- Jerry Wright, of Community Associations Institute (CAI), described instances where the bank forecloses without a deed or trustee's deed recorded, and the associations do not get paid by the bank.
- Senator Whipple asked Mr. Wright if this is a practice that varies between banks.
- Jerry Wright responded that he didn't know but would try to find out the answer.

- Mike Toalson, from Home Builders Association of Virginia, asked Jerry if prior assessments are eliminated in the foreclosure process.
- Jerry Wright replied under Virginia law, the prior lien is essentially wiped out, but that does not prevent the condominium association from going after the former owners as debtors personally. When the bank becomes the owner, it is treated just like any other owner.
- Chandler Scarborough told the group that in Virginia Beach this problem has risen to epidemic proportions. More often banks are delaying recording the deed, and the association will continue to bill the former owner for the condominium fees. Banks are trying to make it look as though they don't own the property.
- Mike Toalson noted the historic foreclosure rate; in Florida one in five homes is in foreclosure. Because of the expenses involved with real estate, banks are needed to provide financing. As a former Virginia Bankers Association (VBA) employee, he is concerned that if too much of a burden is placed on banks, there will be a limited amount of available resources at the beginning of the transaction. The lack of financing is limiting sales. He feels if banks are given the power to place a lien it becomes an impediment, and that lien power will all but eliminate second mortgage loans for condominiums. This situation needs to be approached very carefully.
- Senator Whipple responded that this group will explore the problem and work to see if there are reasonable solutions.
- Melanie Thompson, a citizen member, agreed that there are quite a few foreclosures, although Virginia is not on the level of Florida. She is confused as to why the association has not done more to hold the lender accountable for the fees, because four years is an outrageous amount of time for this to continue to be a problem. She has never seen a lender not take care of the property after they have taken it into their inventory.
- Senator Whipple noted that constituent e-mails may be specific to a situation, or the situation may be happening generally.
- Tricia Henshaw, the Director of the Common Interest Communities Board, told the group that she receives many complaints from people about this issue. It is important to remember that these associations are comprised of volunteers. They are a group of people who are running an organization, but may not necessarily be knowledgeable enough to go after the bank or know what to do in this type of situation. This is the case for professional managers of associations as well as small to mid-sized associations. Maryland has passed a bill that allows liens up to \$1,200 dollars. In many associations that would make a tremendous difference.
- Janice Burgess, of the Virginia Housing Development Authority (VHDA), mentioned that there are already so many restrictions on financing condominiums. It is a catch-22 because no more than 30% of units may be delinquent on assessments. The solution might not be to place more restrictions on financing.
- Chandler Scarborough noted in Virginia Beach there are only a few communities affected because there are lower priced properties that attract first-time buyers.
- Matt Bruning, the Director of Government Relations for the VBA, agreed it is unusual for a unit to be abandoned for four years. As far as liens are concerned, the law is first in time, first in line. Moving lien preference up will add additional risk

in lending. Anything that adds cost to banks will negatively affect the ability of the housing market to rebound.

- Senator Whipple asked what happens under a normal situation, and whether the homeowner association is ultimately made whole.
- Matt Bruning replied the lien preference is structured so that taxes are paid first, and then the lender, should the property go to foreclosure. After taxes, the lender is made whole before the homeowner association.
- Joseph Hudgins, from Independent Insurance Agents of Virginia, added that once the unit is foreclosed, the bank will begin to pay assessments as they come due.
- Senator Whipple noted when the bank becomes the owner, it pays both the taxes and assessments just as any owner would.
- Pia Trigiani, of MercerTrigiani, pointed out the bank is not obligated to pay prior assessments upon taking ownership. Under the Condominium Act, tax liens are paid first, then the first deed of trust, and then any assessment lien. Under the Property Owners' Association Act, tax liens are still paid first, then the first deed of trust, and then whoever records their lien at the courthouse first wins the judgment. The problem now is that lenders are delaying foreclosure to avoid paying association fees. If lenders do foreclose, they may not pay assessments until they sell the condominium unit or house. Association assessments add value to a lender's security interest in a condominium association, but that may not be the case in other homeowner associations. Another major issue for homeowner associations is when properties are not given proper attention. For example, a homeowner on the way out the door might trash the home or leave it unsecured and it can become a blighted piece of property.
- Mike Toalson cautioned against creating a situation that would impede a future sale. The only thing worse for a condominium association than not collecting is having an abandoned unit in the property. He encouraged finding incentives for banks to take ownership of these properties.
- Senator Whipple asked Mr. Toalson how the bank would be hurt by a requirement to keep more money in escrow.
- Mike Toalson responded that lessens the number of people who can qualify for financing on the unit.
- Chandler Scarborough noted that requiring buyers to qualify for their mortgages and assessment fees is good business. Requiring that those be paid through escrow should not be an additional financial hardship.
- Melanie Thompson asked Mr. Bruning if he agrees that most underwriting guidelines already call for a homeowner to have a substantial amount of money. She feels that adding an escrow requirement would be adding unnecessarily to existing financing requirements.
- Matt Bruning replied under the national standards, requiring 20% down will be the new norm.
- Janice Burgess noted that when calculating a potential buyer's qualifications using Fannie Mae, Freddie Mac, and FHA, the amount of the current homeowner association dues is factored into consideration, just as taxes and homeowner insurance. Insurance and taxes are escrowed once per year. Homeowner association dues may be more complex, because special assessments are not taken

into consideration. An amount for special assessments could be escrowed, but the homeowner may not ultimately have to pay that fee.

- Joseph Hudgins asked if there are circumstances where the condominium association would pay the assessments.
- Mike Toalson responded one of the problems for small associations is both the amount of the assessment and the mortgage holder can change.
- Chandler Scarborough wondered how Virginia's lien priority compares to other states.
- Senator Whipple asked Heather Gillespie, the Common Interest Community Ombudsperson, to tabulate calls she has received related to the effects of associations and update the group so they can better understand the typical HOA case.

III. SB 1253; Virginia Property Owners' Association Act (Vogel, 2011)

- Senator Jill Vogel
- Angela Bell, Chief of Staff for Senator Vogel, explained a problem in the Loudon County area with a homeowner association being run by the declarant developer. The association has had problems trying to get the developer to help with the assessments.
- Pia Trigiani explained these types of cases involve a developer who retains control of the homeowner association and remains on the board even after there are a substantial number of homeowners in the community. The Condominium Act allows the developer to retain control of the association for specified periods of time. However, the Property Owners' Association Act (POA) does not address developer control and was never intended to affect developer control. Some developers have retained control until the last unit is sold. Instead, the developer should bring homeowners into the association and transition slowly. Even uniform acts do not recommend developer control provisions. Transitioning control from the developer to homeowners has always been provided for in the Condominium Act, but not in the POA. Instead the developer control issue is discussed in governing documents. However, legislation cannot modify the existing contract and therefore cannot address this case.
- Mike Inman, of CAI, has observed the lack of transition from developer to homeowners forces homeowners pool their money to hire a lawyer who will force the developer to perform properly. This illuminates the need for homeowners to take control of the association sooner. The developer's interest in retaining control is to provide continuity in architectural aspects of the properties, but that shouldn't prevent them from slowly handing control to homeowners. There are additional complaints that homes built later did not use the same standards of the original homes. However, the developer might be responding to a slowing market after the original homes were built.
- Senator Whipple explained they cannot do anything about what already exists, but they can make changes that may benefit people in the future. If there are successful transitions with condominium associations and the situation is similar with homeowner associations then it seems there should be some solution.

- Mike Toalson told the group HBAV opposes any requirement to turn over developer control. Condominium associations and homeowner associations are completely different. Under the POA, the developer is responsible for maintaining all the amenities of the association very early on and until the final lot is sold. To illustrate, in a development with 5,000 homes, if the developer were required to turn the association over to homeowners when 80% of the units sell, then 1,000 lots still need to be sold. At that point, the developer does not have any control. Most of a developer's profits are made on last few units sold. The developer needs assurance the project will be maintained properly. Every business has good actors and bad actors. In this case, the bad actor has taken advantage of the laws in Virginia, but not every developer will be a bad actor. Requiring a transfer of control of the association when a certain percentage of units has sold will put developers at risk. This will affect the scale of projects in the future, and most likely there will be several small developments rather than a large development. If this requirement is imposed there will no longer be large developments with wonderful amenities in Virginia.
- Senator Whipple asked if there might be a way for legislation to address only the bad actors.
- Mike Toalson replied the Common Interest Communities Board was set up to deal with bad actors.
- Senator Whipple responded that it is up to the legislators to define law, and the CIC Board cannot make up its own ways to deal with bad actors. She suggested they distinguish exactly what is bad actor behavior. She pointed out that they handled the situation with mortgage flipping similarly, and were able to eliminate a devious practice.
- Melanie Thompson mentioned there are five states that have a two-year deadline for developers to turn over control to homeowners.
- Mike Toalson reiterated that in order for builders to continue to develop large associations with community amenities, any restriction on a time frame to turn over control would be a hindrance. The result would be smaller developments with no amenities.
- Senator Whipple asked whether states with the two-year requirement have lost all of their large developments. She suggested they look to those states to determine whether that will indeed be the consequence of implementing a time frame to turn over control.
- Mike Inman suggested allowing a supermajority of homeowners to take a vote on whether to transfer control after two years, since the first people who will know whether the developer is being responsible are the homeowners. If the developer is being responsible and doing a nice job of building the community, the homeowners will not want to take control.
- Mike Toalson replied there is no one who has more at stake in the appearance of a development than the developer and his partners. The first part of a development buyers see is the entrance, and that first impression along with the overall appearance of the development is significant to subsequent sales. It is unusual to buy a lot and then have someone other than the developer build on that land.

- Mike Inman addressed the issue of the size and scale of properties. There are small time developers in Southeast Virginia, where 300 lots is more than the average, and those developers are not maintaining the community properly. They set the dues too low, and run out of money. It is not an epidemic, but is certainly a significant and recent trend
- Mike Toalson noted the people who made those investments are having a much more difficult time today.
- Senator Whipple suggested they think about ways they might be able to isolate bad actors. She is not interested in penalizing an entire industry, but in ensuring fair treatment. When a developer violates the norm and takes advantage of the laws of the state they need a way to handle that situation. She noted there may be times when bad actor behavior is strictly a result of the economic environment.
- Delegate Cosgrove acknowledged they cannot constitutionally have any impact on existing contracts, but they can make an effort to influence the behavior of bad actors, or make certain behavior illegal.
- Chandler Scarborough mentioned that a big concern builders have is that the homeowners will change the rules on the developer once they take control of the association. He suggested finding a middle point and creating checks and balances where the developer will not be able to adversely affect the homeowners and vice-versa.
- Angela Bell noted dual control is what Senator Vogel was trying to create with her bill.
- Senator Whipple asked for any other comments; there were none.

IV. Public Comment

- There was no public comment.

V. Adjourn

- The meeting was adjourned at 2:45 P.M.

COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair
SENATOR MAMIE LOCKE, Vice Chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

Common Interest Communities Work Group House Room C, General Assembly Building October 5, 2011, 1:00 P.M.

Members present: Senator Mary Margaret Whipple, Delegate John Cosgrove, Sarah Broadwater, Janice Burgess, Pamela Coerse, Heather Gillespie, Dale Goodman, Trisha Henshaw, Joseph Hudgins, Chandler Scarborough, Michael Toalson, Pia Trigiani, Jerry Wright, and Ron Kirby.

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Senator Mary Margaret Whipple, Chair**
 - The meeting was called to order at 1:10 p.m.
 - Each member of the work group introduced himself.

II. Explanation of Time-Share Issues/Solutions

- **Senator Whipple** asked Delegate Cosgrove to provide a brief introduction of time-share issues.
- **Delegate Cosgrove** noted that he himself is a time-share owner, and has been involved in time-share issues for several years. During that time, he has been aware of many concerns of other time-share owners, especially with regard to issues involving maintenance fees, the difficulty of reselling time-shares, and the time-share industry generally. The United States Constitution and the Virginia Constitution prohibit the government from retroactively impairing contract rights; however, there are some legislative changes that can be made to increase consumer protection in the time-share industry. Delegate Cosgrove also recognized Frank Eck, one of the major contributors to the legislation, who recently passed away. Mr. Eck was a man of integrity, and will be missed both as a colleague and a friend.

III. Discussion of Time-Share Act Draft

- **Philip Richardson** of Eck, Collins & Richardson, explained that § 55-361.1 was amended to exempt a developer from registering a time-share project located outside of Virginia, but for purchase by a Virginia resident, if that purchaser is already an owner with that time-share company. There are requirements that the

DELEGATE DAVID L. BULOVA
DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR MARY MARGARET WHIPPLE

MARK K. FLYNN
T.K. SOMANATH
MELANIE S. THOMPSON

developer will still have to comply with, for example disclosure requirements. Consumers are often frustrated when told by the developer that they are unable to purchase an out-of-state time-share because the developer is not registered in Virginia. This would alleviate that frustration, as long as the consumers are existing owners with the company.

- **Philip Richardson** explained that § 55-362 contains definitions that were amended to provide clarity and consistency throughout the Act.
 - **Senator Whipple** asked if the changes to definitions that the sub-work group agreed to are included in this copy of the bill draft.
 - **Philip Richardson** responded that he believes those changes have been incorporated.
- **Philip Richardson** explained that the addition of subsection D to § 55-363 is meant to address a situation where a time-share owner attempts to transfer his interest back to the developer or association without the consent of the developer or association. The new language in this section requires an authorized representative of the developer or association to sign the deed conveying the property back to them.
 - **Senator Whipple** asked if the developer or association could refuse to accept the deed.
 - **Philip Richardson** replied that they could refuse acceptance.
 - **Delegate Cosgrove** explained that in the past, although it has not occurred frequently, time-share owners who no longer wanted the time-share would simply deed the share back to the developer or association without any knowledge or agreement by the developer or association. This amendment would require the developer or association to consent to the conveyance.
 - **Senator Whipple** mentioned that at the sub-work group meeting, Mr. Eck said that this amendment would be a significant change from the common law, and asked the members of the work group to elaborate.
 - **Pia Trigiani**, of MercerTrigiani, explained that this is a significant change from real estate law. In real estate law, only the grantor is required to sign the deed—this is the significance of the change. Typically, acceptance of the deed is presumed by receipt of the deed. Here, because people are unable to resell their shares, they are deeding them back unilaterally without any meeting of the minds. This provision reflects that there will be meeting of the minds.
 - **Senator Whipple** noted that sub-work group notes indicated there were no issues with this section. She asked if there were any other comments from the work group; there were none.
- **Philip Richardson** explained changes to § 55-366 were to clarify that this legislation does not affect time-share projects that were in existence before July 1, 1981.
 - **Delegate Cosgrove** inquired about the significance of the date July 1, 1981.
 - **Philip Richardson** answered that July 1, 1981 was when the Virginia Real Estate Time-Share Act was enacted.
- **Philip Richardson** explained that the reason for amendments to §§ 55-367 and 55-368 is to clarify the requirements for the time-share instrument creating a time-share program or project.

- **Philip Richardson** explained that changes made to §55-369 clarify the existing process of transferring title to common elements (furniture, fixtures, and equipment) to the association at the end of the developer control period.
 - **Delegate Cosgrove** further explained to the work group that this provision ensures that when the developer control period ceases, all furniture, fixtures, and equipment within the time-share units, as well as any other common elements, are conveyed to the association.
- **Philip Richardson** explained that §§ 55-370, 55-370.01, and 55-370.1 all clarify procedural issues related to the association, including calling meetings, maintaining books and records, use of email, and providing annual reports to time-share estate program owners.
 - **Senator Whipple** noted Delegate Cosgrove’s concern from the sub-work group meeting regarding the use of email as the method of contact by developers without consent from time-share owners. She asked if there had been a consensus on allowing time-share owners to specify the method of communication by which they will be contacted.
 - **Delegate Cosgrove** answered that there had been a consensus on the issue.
- **Philip Richardson** described the addition of § 55-370.1.1, which applies to time-share use projects. This section requires that the association provide annual reports and audited financial statements to time-share use owners on an annual basis. Associations in time-share estate programs have always been required to send its owners financial information annually, this section imposes the same requirement on associations in time-share use projects.
 - **Delegate Cosgrove** noted that this provision is one of the sections that increases protection for consumers. Time-share owners will be provided with financial accounting records and information regarding boards of directors, and one of the primary complaints from time-share owners is difficulty obtaining this information.
- **Philip Richardson** explained that § 55-371 clarifies what information must be contained in the time-share instrument for a time-share use programs. There were comments by the work group with regard to this section.
- **Philip Richardson** described changes to § 55-374, which provides for a reorganization of the public offering statement to allow the information provided to read more logically. It doesn’t change any of the requirements as to what information must be contained, but simply reorganizes how that information is presented.
 - **Senator Whipple** asked Trisha Henshaw, the executive director of the Common Interest Community Board (CICB), if the concern she raised at the sub-work group meeting had been addressed.
 - **Trisha Henshaw** replied that it was addressed at the sub-work group meeting.
- **Philip Richardson** explained that § 55-374.1 resolves inconsistencies between this chapter and the Virginia Nonstock Corporation Act in favor of this chapter.
 - **Heather Gillespie**, the Common Interest Communities ombudsperson, pointed out this section also makes the Consumer Protection Act inapplicable to the Time-Share Act.

- **Delegate Cosgrove** explained that, as he understood it, the reason the Consumer Protection Act is exempt is because courts have held that it does not apply to the Time-Share Act. This provision simply codifies existing case law.
- **Philip Richardson** confirmed that this is the reason for exempting the Consumer Protection Act.
- **Pia Trigiani** further explained that the Consumer Protection Act states that if there is a more specific regulation regarding a transaction then that law will trump the Consumer Protection Act, which is what the court ruling holds. It has long been held that when a more specific statute or regulation, like the Condominium Act, then the Office of Consumer Affairs does not have jurisdiction. She mentioned that it might be beneficial to include an exemption in the Consumer Protection Act, where most exemptions are found, for the sake of clarity.
- **Heather Gillespie** noted that the Department of Professional and Occupational Regulation (DPOR) works with the Office of Consumer Affairs on a fairly regular basis to discuss time-share issues, and there are portions of the Act that they will attempt to resolve, but there are portions that are more appropriate for DPOR. She is hesitant to cut the consumers off from every opportunity that is available to them to help them find a solution, whether with DPOR or the Office of Consumer Affairs. She also noted that she is referring to products registered with the CICB, and time-share products might not always be registered with the CICB.
- **Philip Richardson** described the changes made to § 55-374.2, which clarifies the information required for exchange company disclosure documents.
 - **Senator Whipple** mentioned that the sub-work group meeting notes indicate that Delegate Cosgrove asked for an explanation as to why subsection B was stricken. She asked Mr. Richardson if he had been able to discuss with his colleagues why this section was stricken.
 - **Philip Richardson** responded that he had discussed this with his colleagues, but did not have the information with him. He said that he would send the information he had regarding the issue to Delegate Cosgrove.
 - **Senator Whipple** acknowledged that this is an unresolved issue, and the work group will need more information to make a decision with related to this section. This issue will be discussed further at the next meeting involving the Time-Share Act.
- **Philip Richardson** explained that minor changes to § 55-375 clarify the escrow deposit requirements in connection with time-share and alternative purchases.
- **Philip Richardson** described revisions to § 55-376, which specify that the purchaser's notice of cancellation must be in writing.
 - **Heather Gillespie** asked if there is a requirement elsewhere in the Time-Share Act that the address of the developer or agent be included in the contract. She often hears complaints from people who attempted to cancel their contract and did not have the proper information as to where to send the cancellation. She suggested it might be helpful to include that information in the contract.

- **Philip Richardson** answered that the information is required to be in the purchase agreement.
- **Pamela Coerce** added that the information is located in the public offering statement, which is given to the buyer with the contract.
- **Heather Gillespie** wondered if it would be helpful to include that information in the actual contract since a buyer may not know to look in the public offering statement. She explained that she often hears complaints about buyers trying to cancel their contracts within the seven-day period of time and they inadvertently send their cancellation notice to the wrong address or have difficulty finding the right address.
- **Senator Whipple** agreed that including that information in the actual contract itself, rather than a separate document, would be helpful for the buyer, and not prohibitively difficult for the industry.
- **Philip Richardson** detailed the changes to § 55-376.1, which clarify procedures related to possibility of reverter and the reverter deed for a time-share estate. The contract allows for a reverter deed, where if the buyer stops making mortgage payments, the property reverts back to the developer. This section clarifies some of the provisions related to that process.
 - **Senator Whipple** noted that the sub-work group meeting notes indicate that attorney fees should remain in the section, and that should be un-stricken in the draft.
- **Philip Richardson** explained the addition of § 55-377, which requires the buyer's acknowledgement and stipulates that it must be a separate written document. The buyer's acknowledgement is a stand-alone document that has bullet-pointed acknowledgements setting out the required disclosures.
 - **Delegate Cosgrove** added that this provision significantly increases consumer protection. Often, buyers complain that they were unaware of certain restrictions when they signed the contract, especially those related to resale and usage agreements. This document makes clear to buyers that they are purchasing the time-share for their personal use and enjoyment, and not as an investment, and sets out restrictions related to resale, among other restrictions in the contract. This document has to be provided to the buyer at the time of purchase.
 - **Pamela Coerce** also added that each disclosure is a stand-alone statement that must be initialed by each individual purchaser, and the entire document must also be signed.
 - **Chandler Scarborough** suggested including the address of the developer as a bulleted point in this document.
- **Philip Richardson** described the new language in § 55-380, which requires a copy of the buyer's acknowledgement to be included in the certificate of resale in the event of any resale of a time-share by an owner other than the developer. Also, the addition of § 55-380.1 includes new regulations for the resale industry.
 - **Delegate Cosgrove** noted that these additions to the Time-Share Act provide new protections for consumers. There are many unscrupulous companies in the time-share resale industry who solicit time-share owners, demand up-front payment for services, and then never follow through with

any sale. These sections greatly increases requirements the companies must follow, including disclosing the number of time-shares they have sold for customers. For the first time there will be regulations in place to protect consumers against dishonest resellers.

- **Mike Toalson** asked if resellers of time-share units are typically licensed by the state.
 - **Pam Coerce** clarified that there currently are no regulations for the resale industry. These regulations will prevent out-of-state companies from soliciting Virginia residents, and all resale companies will be required to register with the CICB. Requirements placed on resale companies are similar to the requirements followed by developers.
- **Mike Toalson** mentioned that a resale transaction appears to be similar to any other form of real estate sale, and he wondered if it is common to require the fee to be paid before any services are rendered.
 - **Delegate Cosgrove** responded that requiring the fee to be paid up-front is common.
 - **Pam Coerce** added that one of the problems with this industry is that companies are charging fees up-front, and there are no requirements regarding their performance, including advertising of the time-share unit and marketing techniques. These regulations allow for the fee to be collected before performance of services, but place requirements regarding advertising and marketing.
- **Mike Toalson** wondered if it would be more prudent to prohibit resale companies from collecting fees before providing services.
 - **Philip Richardson** explained that a prohibition would not be beneficial for the consumer because consumers already experience difficulty with the resale market and owners need an avenue to sell their time-share units. A properly regulated resale industry is more beneficial for consumers.
 - **Delegate Cosgrove** added that Florida has enacted similar legislation regulating the resale industry. He explained to Mr. Toalson that there currently is no regulated resale industry for time-shares. Developers are not interested in resale, and these regulations will prevent bad actors from becoming involved in the time-share resale industry.
- **Ron Kirby** suggested perhaps Virginia should require resale companies to be licensed with the Real Estate Board.
 - **Pia Trigiani** agreed that if resale companies are selling time-share units on behalf of a third party, they should be licensed as a broker under the real estate laws of the Commonwealth.
 - **Delegate Cosgrove** acknowledged that while he does not necessarily disagree, licensing resale companies will require more thought and discussion, and perhaps separate legislation. The group needs to be careful not to make it more difficult for legitimate time-share

- resellers to do business in Virginia. Perhaps the group can discuss this issue further with Ms. Gillespie.
- **Senator Whipple** noted that this section in the bill draft sets up registration of time-share resale companies.
 - **Philip Richardson** explained that these sections also require companies to disclose how the company will advertise the unit, who the reseller is, success rates, etc. The regulations will inform consumers as to exactly what services they are purchasing.
 - **Elizabeth Palen** pointed out that issues regarding lines 506 and 551 were not resolved at the sub-work group meeting, and the group needs to agree what “conspicuous type” means.
 - **Delegate Cosgrove** acknowledged that the group will need to discuss this further and reach an agreement.
 - **Chandler Scarborough** wondered if the term “Reseller” should be changed to “Resale Broker,” as provided in the definitions section of the Act, for consistency reasons as well as to clarify that these regulations do not apply to an owner selling his own time-share.
 - **Senator Whipple** agreed with Mr. Scarborough.
 - **Sarah Broadwater** mentioned that in line 504 it is unclear which jurisdiction is being referenced.
 - **Senator Whipple** acknowledged that the language is ambiguous, and the draft should be revised to clearly reflect which jurisdiction must be included in the disclosure.
 - **Trisha Henshaw** pointed out that the draft does not actually require resellers to register, instead there are provisions related to the CICB. Section 55-390 mentions registration with the CICB and references time-share projects and time-share programs, but there is no provision requiring registration with the CICB in this draft.
 - **Senator Whipple** noted that the sub-work group agreed that a provision requiring registration with the CICB needed to be included in the Act; she directed staff to include this provision in the revised bill draft.
 - **Heather Gillespie** mentioned that line 552 uses the term “disclosure packet,” but elsewhere in the Act “certificate of resale” is used to reference the same document.
 - **Senator Whipple** agreed that the terms should be rewritten to match those set forth in the definitions section of the Act.
 - **Philip Richardson** offered an explanation of how the resale industry works, in an effort to clear up any remaining confusion regarding these sections. There may be an individual who is a licensed real estate agent in Florida, a consumer who is a Virginia resident, the piece of property is located in California, with a buyer located in yet another state. The real estate agent licensed in Florida, with business located in Florida and a Florida address, complies with the requirements set forth in this Act.

- **Philip Richardson** also explained that amendments to § 55-382 require a determination of compliance for certain violations by the CICB instead of the Real Estate Board.
 - **Senator Whipple** mentioned that the sub-work group meeting notes indicate there were concerns expressed by both Ms. Henshaw and Mr. Richardson regarding subsection B at line 645, which requires an aggrieved owner to first seek a determination of compliance from the CICB for violations under §§ 55-375 and 55-386 before going to court. She asked Mr. Richardson whether these issues have been resolved.
 - **Delegate Cosgrove** acknowledged these concerns, and noted that they have not yet been resolved.
 - **Senator Whipple** noted that questions were raised about this issue that still need to be addressed. She further noted that the acronym CICB should be spelled out in the final draft. The draft notes that clarification in the section is needed, and she asked Ms. Palen and Mr. Richardson to take care of this issue and highlight it in the next draft the work group reviews.
- **Philip Richardson** explained § 55-383 revisions, which specifies the ground on which a court may grant rescission of a contract.
 - There were no questions from the Work Group.
- **Philip Richardson** further described changes to § 55-385, which clarify the record-keeping requirements of financial reports, and strikes superfluous language.
 - There were no questions from the Work Group.
- **Philip Richardson** detailed the revisions to § 55-386, which specify requirements for a performance bond in the event the developer's units are incomplete.
 - **Senator Whipple** noted that there should be a space between the words "credit" and "or" at line 691.
- **Philip Richardson** mentioned the amendments to § 55-390, which provides that a time-share project or alternative purchase may not be disposed of unless the project or purchase has been properly registered with the CICB.
 - There were no questions from the Work Group.
- **Philip Richardson** also explained that § 55-394.1 revisions specify the procedure by which a time-share project or program registration may be terminated with the CICB.
 - **Senator Whipple** mentioned that the sub-work group meeting notes indicate Ms. Henshaw had an issue with this section and administrative termination by the CICB.
 - **Trisha Henshaw** replied that the CICB board put forward a proposal for administrative termination as part of the administration's packet? The question at the sub-work group meeting was whether to include a provision for administrative termination by the CICB in the Time-Share Act as well.
- **Philip Richardson** described revisions to § 55-396, which specify the powers and duties of the CICB, particularly with regard to issuing a cease and desist order determined by legal notice with an opportunity for hearing that the developer has violated one of the specified unlawful practices set forth in this Act.

- **Delegate Cosgrove** asked Ms. Henshaw if the CICB has discussed this provision.
 - **Trisha Henshaw** responded that it had not yet discussed this provision.
 - **Pia Trigiani** mentioned that the next CICB meeting is scheduled for December 1, 2011.
- **Senator Whipple** noted that § 55-396 remains unresolved, and the Work Group would not be in position to discuss this provision until after the CICB meeting. The final report to the full Commission will therefore take place at the Housing Commission's December 13 full Commission meeting.
- **Delegate Cosgrove** mentioned that he had asked that § 55-400 be stricken as it includes the time-share reseller in the criminal penalties. Adding new felonies costs the Commonwealth money and this decreases the chances of the bill passing the General Assembly.
 - **Senator Whipple** noted that no new language is included in § 55-400 of this draft.
- **Delegate Cosgrove** asked staff to research whether resellers are being included in the criminal penalties section, and if they are, his concern stands. Otherwise, the provision should be unstricken.
 - **Pia Trigiani** suggested including reseller penalties as a misdemeanor instead of a felony.
- **Heather Gillespie** noted that she regularly hears complaints about the existing Time-Share Act. Despite these changes to the Act, there are still issues that will not be addressed. She explained that of all the complaints she receives as ombudsperson, 39% are related to time-shares, and 63% of those time-share complaints are related to misrepresentation during sales presentations. She acknowledged that there is no way for the Work Group to address this issue, because being able to prove misrepresentations or ensuring that the information provided in sales presentations is accurate is a difficult task. Nevertheless, she wanted to bring this issue to the attention of the Work Group.
 - **Delegate Cosgrove** acknowledged that this is an accurate assessment of one of the major problems with time-shares. Unfortunately, the remedy is a civil action by the time-share owner. He is not sure a solution exists for preventing or regulating that type of bad actor behavior.
 - **Senator Whipple** noted that these amendments to the Time-Share Act significantly improve disclosure requirements. Hopefully this will assist buyers in determining what representations that have been made to them are accurate. Additionally, she suggested the group consider a shorter, more readable document outlining amenities offered by the developer. The Work Group can consider this and discuss this suggestion further at the next meeting.

There was no public comment or any additional remarks by the Work Group.

The meeting was adjourned at 2:38 p.m.



VIRGINIA HOUSING COMMISSION

MEETING SUMMARY

Neighborhood Transitions and Residential Land Use Work Group House Room D General Assembly Building May 3, 2011, 10:00 A.M.

Members Present: Delegate John Cosgrove, Delegate Rosalyn Dance, Delegate Glenn Oder, Mark Flynn, Barry Merchant, Brian Gordon, Chip Dicks, Michael Toalson, David Freeman, Bill Ernst, Neal Barber, Ted McCormack, A. Vaughn Poller, Tyler Craddock

Staff present: Elizabeth Palen, Jillian Malizio

I. Welcome and Call to Order

- Delegate Rosalyn Dance, *Chair*
 - The meeting was called to order at 10:10 A.M.

II. S.B. 1312; Repair of Derelict Buildings (McEachin, 2011)

- Jonathan Baliles; Exec. Staff Assistant, Planning & Development Review, City of Richmond
- James J. Kelly, Jr.; Visiting Professor of Law, Washington & Lee University School of Law
 - Receivership is tool in which government has a marginal role, and instead involves the private sector. The process addresses issues of urban code enforcement, economic development, and public safety. It allows a judge to appoint a receiver to oversee the repair of vacant residential property with persistent and outstanding Code violations.
 - Why is receivership needed?
 - Receivership combats blight using private money and resources.
 - Vacant property has the highest correlation to the incidence of crime.
 - Vacant houses cost the houses around it value.
 - It provides for more effective enforcement of the Virginia Code as current Code enforcement tools don't work.
 - Receivership targets visibly uninhabitable properties, not properties that have been foreclosed or are commercial properties. Visibly uninhabitable properties are homes with serial Code violations, those

- that remain vacant for decades, and those that are the scene of illicit activities.
- Banks want to get rid of foreclosures and derelict buildings, and receivership turns derelict buildings into revenue producing parcels for local tax rolls.
 - Of the 2,300 vacant properties (including commercial buildings and buildings lost through foreclosure) in Richmond, roughly 500-600 are visibly uninhabitable.
 - Current regulations delay the process.
- What is receivership?
 - Receivership allows private parties to take possession or permanent ownership of the blighted property, and does not require any government entity to be in the chain of title to begin the rehabilitation process.
 - The receiver is a local non-profit organization or private developer that qualifies under the pre-established regulations. Those regulations include: demonstrated ability and experience needed to rehabilitate the property; submission of a rehabilitation plan to the court; and no existing Code violations on other vacant property.
 - The receiver takes possession of the property if the property owner cannot demonstrate that he/she can complete rehabilitation in a reasonable time. The owner decides whether to comply and repair the property or not. The receiver does not hold the title to the property; the property owner retains ownership until the property is foreclosed.
 - At any time during the receivership process (including foreclosure), the original property owner can reclaim possession by paying off the receiver's lien and/or demonstrating the ability to repair the house.
 - The receiver incurs the cost of rehabilitation, but if no responsible party comes forward to pay the repairs, a nuisance lien can be filed that could result in foreclosure.
 - How does it help?
 - The receivership process only applies to uninhabited properties.
 - It targets properties that can be repaired and made livable by a court-appointed receiver or sold to responsible buyer.
 - Historic tax credits may be used for renovations.
 - Receivership is not land banking or eminent domain.
 - Under the receivership process, properties are fixed up immediately and properties are dealt with one at a time.
 - Homes that have been neglected affect the surrounding neighbors as well as the community. For example, there was an abandoned house in Church Hill that had 63 Code violations over a ten-year period. The house caught fire last month, and neighbors' homes could have caught fire as well. Receivership would help prevent a situation like this from happening in the future.
 - Receivership in practice:

- Only one out of every eight cases goes through the entire process (Baltimore).
 - Of the receivership cases, 85% end in voluntary rehabilitation.
 - The market dictates the pace and scope of renovations. Local developers and community developers can be receivers.
 - So-called “slumlord” Oliver Lawrence owned more than 150 properties in various states of disrepair. The bank refused to foreclose because the properties were in such poor condition. He was jailed for excessive upkeep-related Code violations. The case took thousands of man hours and two and a half years. When the properties finally went up for auction some sold for as little as \$7,000.
- **Delegate Oder**—Asked whether receivership in Virginia would be a new body of law.
- **Jonathan Baliles**—It is an extension of the Derelict Building Legislation, but essentially this would be a new body of law.
- **David Freeman**; City of Norfolk—Asked how the definition of visibly uninhabitable buildings relates to the definition of derelict buildings.
- **James Kelly**—A derelict building has to be vacant, boarded up, and separated from utility services for six months before it can be considered a derelict structure.
- **Connie Chamberlin**; Housing Opportunities Made Equal (HOME)—Asked who would be a receiver and what incentive there is to be one.
- **James Kelly**—A receiver is someone who acts on behalf of the court. For instance, in Baltimore they set up a non-profit organization to act as the receiver. The receiver provides a public service, and in addition to recouping the cost of repairs is paid for his services.
- **Connie Chamberlin**—Asked whether the receiver would have to be someone designated in advance or if it can be anyone who persuaded the court they could make the necessary repairs to the property.
- **James Kelly**—The receiver can be anyone the court feels is qualified to make the repairs.
- **Mike Toalson**, Home Builders Association of Virginia (HBAV)—The housing environment is different now than it was in 2000 and 2001. He asked what those in the public sector know about the demand for this type of housing that the private sector does not know about housing. The government is taking and selling someone else’s property.
- **James Kelly**—The key is that the sale can take place for any repairs that are being made. It puts the current owner to the test and forces them to comply with the law.
- **Mike Toalson**— Asked Mr. Kelly why he believed the government is more capable of making repairs to property than the private sector. He also asked whether the ability to borrow money and resources for this activity is coming from local government.
- **James Kelly**—The Code enforcement budget would be used for funding.
- **Jonathan Baliles**—It’s not unfeasible for the receiver to do the work and the owner to sell the property as long as the receiver lien is paid. Richmond has the largest

population of public housing between New York and Miami. For spot blight cases, the money for the property is put in escrow.

- **James Kelly**—Receivership is limited to derelict buildings with a long-term vacancy.
- **Jonathan Baliles**—There are some homes that have been vacant for over 30 years. It is not uncommon to see a house sitting empty in the city for that period of time.
- **Mike Toalson**—Asked why the government would believe there is value in a house that has been vacant in a neighborhood for that long.
- **James Kelly**—The title can cause trouble. The only way to clear the title is through litigation. People buy a shell and wait for everyone else to fix the neighborhood, and then sell it for more money. They invest as little as possible in the house.
- **Mark Flynn**; Citizen Member—The city wouldn't ultimately be making the decisions. These are private dollars that are stabilized by city funds.
- **James Kelly**—There is no way a receiver could accept the position unless they knew the house would be picked up at auction.
- **Mark Flynn**— Under the receiver process the private sector pays for the rehabilitation, in contrast to spot blight where the city has to put up the money.
- **James Kelly**—That's why the auction process is so important. Once the court is convinced that the owner isn't going to fix up the property, a receiver is appointed. The receiver completes basic improvements to stabilize properties and then sells them at auction.
- **A. Vaughn Poller**; Hampton Roads Housing Consortium—Asked if it is possible for the locality to be the receiver.
- **James Kelly**—That was the trend in Baltimore. The original set-up was for independent non-profit organizations; then the city got more involved in the rehabilitation process.
- **Neal Barber**; Community Futures—Asked if there are other communities or states that have enacted similar legislation.
- **James Kelly**—Cleveland, Ohio has used this process for many years. There is accountability to the court because the court has to be satisfied with the receiver's plan. Although, the process is limited by the fact that the bank lien will be paid first; that loan trumps the receiver's lien. It is also limited to residential property only. This process has been used repeatedly to clear title.
- **Jonathan Baliles**—The receivership process has also been enacted in Kansas City, Texas, Pennsylvania, and New Jersey.
- **Chip Dicks**; FutureLaw—Suggested the work group consider how this legislation would fit in with all the other legislation the group has passed, including criminal spot blight statutes and the spot blight authority civil remedy; they are not trying to surpass eminent domain. Derelict structure legislation deals with situations where the property is vacant, boarded up, and has chronic Code violations. When a building becomes derelict, the locality can either execute a plan to repair or a plan to demolish the structure. The plan must be developed in 90 days. If the owner fails to develop a plan, there is no penalty other than the declaration of the building as a nuisance. It allows the locality to take the property, and this is currently in the Code. This receivership legislation takes that legislation a step further than is the

law now. In circumstances where the property owner doesn't have the funds to rehabilitate the property themselves, a receiver is appointed and they put up the money for the renovations. That way, the developers recover their investment upon selling the house. The legislation would expressly provide that the property owner receives the surplus, although it doesn't completely solve the issue of who is the beneficiary of the property. This group has talked about derelict buildings before and has recognized that this process might be targeted at certain neighborhoods, which ties back to redevelopment or conservation areas. Also, this process allows the original property owner to pay the debt and reclaim the property. It's not clear whether the owner is still entitled to the real estate tax abatement. With this process there is some taking power as with eminent domain, but the compensation to the property owner is greater than it would be under eminent domain. Line 74 of Sen. McEachin's bill (SB 1312) reads "in lieu of the appointment of a receiver, the court may permit repair by an owner or a person with an interest in the property secured by a deed of trust properly recorded." This should read "shall" instead of "may." Giving the court the discretion to decide doesn't really help. There should be an intention to clean up the property, and if it's not cleaned up, a receiver who will put up the money to make the necessary repairs will be appointed by the court.

- **Delegate Oder**—It sounds like what Mr. Dicks is saying is the bill could be edited to create another tool for cities while providing some benefit to the owner as well.
- **Delegate Dance**—Suggested a separate work group be formed to edit SB 1312 (McEachin 2011) and address the receivership process to work toward a recommendation from the Commission. She asked Mr. Dicks, Mr. Flynn, Mr. Toalson, Mr. Puller, Mr. Freeman, and Ms. Chamberlin to set up a date before the next Neighborhood Transitions meeting to meet and work on the bill. She told the work group that if anyone else would like to add themselves to the list, they may add themselves to the group.
- **Delegate Oder**—Expressed concern about the negative perception of eminent domain and the similarities with the receivership process. He added himself to the receivership sub-group. He doesn't want this legislation to come before the General Assembly and not pass; it needs the support of all the members of the Commission.
- **Delegate Dance**—Delegates Dance and Oder will attend the sub-group meetings.

III. H.B. 2045; Blighted Property (Ebbin, 2011)

- Delegate Adam Ebbin
- **John Catlett**; Director, Department of Code Administration, City of Alexandria
 - From 2007–2010, we had a problem where an owner demolished his property in the middle of a neighborhood. There was standing water on the property. The community became very concerned when the owner began construction on an eight-foot basement; he basically created a swimming pool. There was two feet of water that became stagnant, which attracted mosquitoes. It was not safe. The city did not have the tools to rectify the situation. The Building Code gives some authority to correct this type of situation, but the owner was out of state. A misdemeanor warrant was issued for the owner but it was too difficult to serve on the owner. HB 2425 placed the provisions under a blight statute.

- HB 2045 would allow the local government to take action on incomplete construction that is left for a substantial amount of time and becomes unsafe because of conditions such as lack of site maintenance, lack of site security, and accumulating water. The bill expands the definition of blighted property to include residential structures. The bill is not eminent domain, nor is it intended to target every unfinished construction. It is intended to be an additional tool for localities to make property safe when they cannot make contact with the property owner.
- We are currently working on provisions that would make this fall under §15.2.
- **Delegate Ebbin**—The difference between the original bill and HB 2045 is that it takes away the locality’s ability to take title of the building.
- **Chip Dicks**—Expressed concern over the expanded definition of blighted property. There are a number of people who have started the building phases of a development, either single-family attached or mixed use developments. Builders have started to build again, but the market demand has not caught up yet with the supply. He wants to make sure that the unfinished building definition doesn’t allow a locality to require the builder to finish the remaining building phases.
- **John Catlett**—Suggested they redefine what determines spot blight. The bill it is not intended to apply to that type of situation.
- **Chip Dicks**—Asked whether the problem they identified is with residential or commercial buildings.
- **John Catlett**—Personal experience has been that the problem is with residential structures.
- **Chip Dicks**—Suggested that if legislation were refined to focus on unfinished single-family houses, that would achieve the bill’s goals. He asked whether this should be in the Building Code as well as the Code of Virginia.
- **John Catlett**—It needs to be in the local government codes. Currently the law has limited enforcement ability for issues outside of the building code itself, including water and trash accumulation, grass and weed control, failed erosion and sediment control, and rodent infestation. None of those issues are addressed through any of the Virginia Building or Maintenance Codes.
- **David Freeman**—The intent is for the bill to apply to new construction. He asked if a structure with an unfinished addition is included in the definition of unfinished buildings.
- **John Catlett**—It could include additions where there is no certificate of occupancy.
- **David Freeman**—Suggested language be included that make clear this legislation does not apply to buildings that have a certificate of occupancy.
- **Delegate Cosgrove**—Expressed concern that making changes like this may impact areas of the state where there isn’t a problem. More rural areas may have houses miles apart.
- **Delegate Ebbin**—Suggested the bill be made more specific to include certain population brackets.
- **Bill Ernst**; Department of Housing and Community Development (DHCD)—The right way to incorporate this is through the Virginia Code. The definition needs to be very tight to make sure it only applies to situations where it is intended to apply to the very specific situations the group has been discussing.

- **John Catlett**—It could be a local option; however, he believes there are other communities that want similar legislation.
- **Mark Flynn**—Asked, as an example, if there was a building that was back in the middle of a field whether Mr. Catlett thought there could be a finding that it endangers the public health. He asked if a building out in the country ever qualify as blighted property under this bill.
- **John Catlett**—That would be highly unlikely to occur under this bill.
- **Delegate Oder**—This is a property rights issue. He wondered at what point people feel the government needs to step in to correct the issue. He suggested they raise the standard, perhaps to “clear and present” danger. Each issue needs to be addressed at a public hearing, and there should be a posting or advertising for that public hearing. There must be some type of due process for the landowner.
- **Mike Toalson**—Asked why a building permit might be revoked.
- **John Catlett**—There are limited situations, such as inaccurate information on the permit. The only other time is when there is no substantial work demonstrated in a six-month period; this can be triggered by inspection. Substantial construction extends the six-month period. The only way a permit would be revoked is if no work is being done on a residential structure.
- **Mike Toalson**—Expressed concern that 30 days is not enough time for adequate notice due to the increase of slow builds due to finances.
- **Delegate Dance**—Asked Delegate Ebbin to use these comments and feedback to revise his proposal and send it to Elizabeth Palen, who will distribute it to members so further discussion can take place at future meetings.

IV. Public Comment

- There was no public comment.

V. Adjourn

- The meeting was adjourned at 11:35.



VIRGINIA HOUSING COMMISSION

AGENDA

Neighborhood Transitions and Residential Land Use Work Group House Room 1, Capitol Building June 20, 2011, 1:00 P.M.

Members present: Delegate Rosalyn Dance, Delegate Glenn Oder, Mark Flynn, Barry Merchant, Chip Dicks, David Freeman, Kelly Harris-Braxton, Bill Ernst, Ted McCormack, Ali Farouk

Staff present: Elizabeth Palen, Beth Jamerson

I. Welcome and Call to Order

- Delegate Rosalyn Dance, *Chair*
 - The meeting was called to order at 1:11 P.M.
 - Each member of the work group introduced himself.

II. *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner of Internal Revenue, 639 F.3d 129 (2011)*

- Kathleen S. Kilpatrick; Director, Virginia Department of Historic Resources
 - Kathleen Kilpatrick began the meeting by providing background information about Virginia's Historic Rehabilitation Tax Credit Program:
 - There is both a state and a federal tax credit program, and both are administered in Virginia by the Department of Historic Resources (DHR).
 - The federal program has been in existence since 1977, and was created to provide preservation, economic, and community benefits, as well as an economic tool for urban revitalization. Accordingly, the key stakeholders have been older cities all over the country.
 - The Rutgers University Edward J. Bloustein School of Planning and Public Policy conducted a study of the economic impact of the Federal Historic Tax Credit. The study found that since 1978, the credit has created nearly two million jobs, and generated \$72 billion in labor income (it is important to note that when rehabilitating existing housing stock, most of the cost is for labor since most of the materials are being reused, and the materials that are needed are purchased in the locality). Approximately 37,000 projects have been

certified, and private investment incentivized through the credits has totaled \$59 billion over the life of the program.

- The cost of the federal program has been more than offset by \$21 billion in federal taxes realized through the program, including resulting income taxes, and sales taxes on goods and services used for rehabilitation.
 - DHR has partnered with the Virginia Commonwealth University Center for Public Policy to quantify the results of the state tax credit program, which came into existence in 1996. The state program was intended to work in unison with the federal program, and was created to incentivize the private sector to provide stewardship through tax credits rather than through regulation.
 - Through the state program, 2,000 landmark properties have been rehabilitated, 12,000 jobs have been created, \$532 million in labor income has been generated, and \$2.6 billion invested privately for a total economic impact of \$2 billion in Virginia. As with the federal program, the cost of the program has been more than made up for with \$55 million in excess taxes.
 - Aside from providing economic benefits, the program preserves landmark buildings, and provides housing benefits by creating a market that draws people to the downtown areas of cities, and businesses subsequently follow the resettlement of the population. The program is also environmentally friendly as fewer materials are required to rehabilitate a building than are required to build one from start to finish. The program benefits Virginia's communities, developers, and historic preservationists.
 - In 2008 when developers began having difficulty securing construction loans, lenders were still willing to provide loans to participate in the program because of the tax credits.
- Kathleen Kilpatrick explained that the future of Virginia's Historic Rehabilitation Tax Credit Program and its ability to provide developers with an economically viable approach to rehabilitation has recently been threatened.
 - In 1996 DHR and the Tax Department created a system to deliver the credits through a partnership or limited liability company (LLC) when the taxpayer could not use the credit to offset his personal income taxes. The partnership system ensures that a developer-owner will be able to attract a capital investment to make the rehabilitation of a building economically feasible. The credit is not immediately transferrable; the developer must form a partnership or LLC, receive a capital contribution from his investors, and then the credit is assigned to the investors through the partnership structure.
 - Several years ago the Internal Revenue Service (IRS) questioned the validity of the program's partnership transactions and whether they were in fact partnerships. The IRS has asserted that the partnership structures are a disguised sale. Categorizing the credits as income

greatly impairs the program's ability to attract investors and rehabilitate landmark buildings.

- Initially, the IRS lost its case challenging the partnership structure in tax court, and appealed the decision to the 4th Circuit Court of Appeals. The 4th Circuit reversed the tax court's decision. The 4th Circuit's decision leaves the fate of Virginia's Historic Rehabilitation Tax Credit Program uncertain. The court provided no guidance for a safe harbor, nor what would constitute an appropriate structure.
 - A chilling effect on building rehabilitation has extended beyond developers to banks and accounting firms, who are uncertain whether the court's decision applies to all tax credits issued through a partnership structure. The majority of economic activity stimulated by tax credits is done through a similar partnership structure. While there are homeowners and small developers who are able to use the credits to offset their own personal income taxes, they make up the smallest percentage of the overall economic benefit.
 - DHR is working with the Historic Tax Credit Coalition and the National Trust for Historic Preservation, and has asked the Treasury Department to define a safe harbor as well.
 - If the 4th Circuit decision stands without correction or further explanation, Virginia will lose 40.5% of the equity from rehabilitation deals with developers. The decision could have impact beyond Virginia as 31 states have tax credit programs, many of which are built on a partnership delivery system. When over 40% of the equity in a project is removed, it will be more difficult for developers to obtain a loan, less money will be available to invest in the buildings, and fewer projects will be completed. The result for landmark buildings is that, absent the program's standards, they will be insensitively rehabilitated or will be left to crumble. Jobs will no longer be created, and places for people to live, work, and play in the urban center will not be generated.
 - Many of the program's projects result in low-cost housing because the historic tax credits can be combined with other tax credits, including the Low-Income Housing Tax Credit, Enterprise Zone Tax Credits, and New Market Tax Credits. Around Richmond the results of the program are evident in market and low-cost housing, the revitalized Miller and Rhoads building, The National theater, many other projects in Church Hill and Shockoe Bottom, and over 100 projects in Petersburg focused on housing.
- Delegate Dance assured Kathleen Kilpatrick that the group recognized the importance of the program and understood the issues it is facing. She asked Ms. Kilpatrick what they could do to help ensure the continuity of the program.
 - Kathleen Kilpatrick asked the work group to support the Historic Tax Credit Coalition's request to the Treasury Department to provide a safe harbor

definition for the future. However, there is still cause for concern because if the court's decision stands, the IRS will be able to reclaim taxes from projects that have already been completed as far back as six years ago. If those developers were to be audited and compelled to pay taxes on the credits from those projects, many of them would be forced to put their buildings into foreclosure and file for bankruptcy. Therefore, a solution at the congressional level is required. Finally, DHR needs the Tax Department to uphold its rulings from 1996 honoring the partnership structure. The then-Tax Commissioner, Janie Bowen, issued a ruling that stood behind the partnership structure, and that ruling needs to be renewed. DHR is also trying to meet with United States Senator Mark Warner, who has expressed interest in this issue, as well as United States Representative Eric Cantor, whose district has benefitted enormously from historic tax credits.

- Delegate Dance suggested the Housing Commission write a letter supporting the tax credit program and a resolution as well.
- Delegate Oder agreed that the Commission could write a letter, and suggested they encourage Governor Bob McDonnell to do the same. A resolution cannot be issued because the regular session has ended, and the Rules Committee is not currently meeting.
- Delegate Dance asked the other members of the work group to offer their thoughts on the issue.
- Chip Dicks, of FutureLaw, pointed out that Virginia is dependent on the federal taxation system. If the court's decision stands, then by law Virginia will automatically recognize the federal position on the tax credits, both going forward and with regard to reclaiming taxes to the statute of limitations period of six years. However, there are statutory exceptions to conformance, and typically that type of legislation would read that the state shall conform in all respects with the federal law except for certain enumerated points. Therefore, this group might consider meeting with the Tax Department or a member of the House or Senate Finance committees to discuss conformance exceptions further. The legislation could exclude Virginia from conforming to the federal position on historic tax credits both going forward and for the statute of limitations period of six years. The program uses a combination of federal and state historic tax credits, and the state income tax credit is an important aspect of some of those rehabilitation deals. The state law can be changed to the extent that it would protect Virginia's Historic Rehabilitation Tax Credit Program. This approach would be stronger than writing a letter or asking for a resolution because the Tax Department will be duty bound to comply with the federal position since Virginia is a conforming tax system under the Code.
- Kathleen Kilpatrick mentioned that in a letter from Janie Bowen, the fact that Virginia is a conforming state is addressed, but that it is not always automatic. The 40.5% of equity that will be lost breaks down so that 35% would be taxable as sale of property income at the federal level. This would increase the basis on which state taxes are computed, resulting in a 5.5%

increase in taxes at the state level. Separating the state and federal taxes would certainly help, however, she feels that ultimately Congress will need to become involved in reaching a solution since the problem extends beyond Virginia.

- Chip Dicks asked if the case had been appealed.
- Elizabeth Myers answered that the petition for rehearing before the full appeals court had been denied en banc.
- Delegate Oder suggested drafting legislation with regard to the conformance exception and presenting it at the next Neighborhood Transitions work group meeting prior to it going before the full Housing Commission. This should happen before the end of the year so the legislation can be considered during the next General Assembly session.
- Delegate Oder made a motion to proceed as discussed, and it was properly seconded.
- All were in favor of the motion and the motion carried.

III. Amicus Curiae Brief of the Office of the Attorney General, *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner of Internal Revenue*, 639 F.3d 129 (2011)

- Elizabeth Bushnell Myers; Assistant Attorney General, Financial Law and Government Support Section
 - Elizabeth Myers explained that the Office of the Attorney General filed an amicus brief in this case because it considers the Historic Rehabilitation Tax Credit Program an important program enacted by the General Assembly under strong policy reasons. There were two main issues in the case. First, the court decided whether the transferred credit scheme was a disguised sale, and second, whether the contributions to investors were essentially a purchase price. The 4th Circuit decided affirmatively on both issues.
 - Elizabeth Myers noted that Virginia has a long and rich history that is reflected in the architectural styles of buildings across the Commonwealth. The position of the IRS in this case seriously undermines the effectiveness of the tax credit program.
 - Elizabeth Myers explained that the Office of the Attorney General had two main points in its amicus brief. First, the Historic Rehabilitation Tax Credit Program is of extreme importance to Virginia. Second, a partnership that harnesses the availability of these tax credits to attract beneficial investment does not lack a valid business purpose; it clearly falls under the definition of a valid business purpose as established by the General Assembly. The partnerships advance strong public policy objectives and as such, should be held to different approximated standards than other ventures. The fact that the partnerships are marketed to partners to reduce tax liability is the exact purpose of the program and how it was statutorily enacted. Furthermore, from a federalism standpoint, ruling against the partnership structure would damage the policy objectives of the Virginia General Assembly.
 - Elizabeth Myers agreed that decoupling taxes for federal and state tax income purposes is essential and should be done very soon. She represents

the Tax Department and can begin speaking with them shortly about potential legislation.

- Mark Flynn, from the Virginia Municipal League, asked Ms. Myers whether or not the case affects other tax credit programs are affected by analogy.
- Elizabeth Myers answered that all tax credit programs that use the partnership system are affected. In Virginia every tax credit program, including the Low Income Housing Tax Credit Program, uses the partnership structure except the Land Preservation Tax Credit Program, which is the only freely transferable credit in the state.
- Mark Flynn asked whether Ms. Myers knew the specific dollar amount involved in the case.
- Chip Dicks answered in Part I, Section C of the opinion it lists \$1.53 million as being owed in taxes.
- Barry Merchant, with the Virginia Housing Development Authority (VHDA), pointed out that the partnership structure exists in nearly every tax credit program, and the IRS has been administering the federal law for tax credit programs for decades, which means they seemingly understood and approved of the partnership structure. He asked Ms. Myers why the IRS was challenging the structure now, and whether there was any distinction with this particular case.
- Elizabeth Myers responded that she did not know why the IRS decided to challenge the partnership structure.
- Delegate Dance suggested a transition within the IRS or an audit may have caused the agency to develop a different impression of the partnership structure.
- Elizabeth Myers agreed, and reiterated that the decision was narrowly tailored to the partnership system involved in the Historic Rehabilitation Tax Credit, and it is not clear how far the decision will reach.
- Delegate Dance asked Ms. Myers if she agreed with the earlier motion that was voted on and passed.
- Elizabeth Myers answered that if the Virginia General Assembly wants its portion of the tax credit to continue as it has in the past, something must be done.
- Chip Dicks noted that his law firm has structured several of these partnerships in the Richmond area. He offered a hypothetical, where A and B are partners in a renovation that costs \$10 million, and \$4.5 million of that amount comes from state and federal tax credits. If company C then buys the \$4.5 million of credits, the IRS position is that out of the \$10 million deal, where A and B are partners and C is a partner for \$4.5 million, then C is not actually a partner, but a buyer of tax credits and not at risk in the \$10 million deal. This does raise questions about all other similarly structured tax credit programs, and he suggested asking the United States Treasury for a revenue ruling. In another scenario, company C buys the tax credits, but it actually does have some risk the deal will fail. Under the current ownership of these partnerships, more than 45% of the income and losses can be assigned to company C. With tax credit deals, the losses and income are

assigned to the partnership at a different ratio than the investor. He suggested asking for a revenue ruling, setting out several different factual scenarios that can then be relied upon for a safe harbor.

- Elizabeth Myers agreed, but warned that the risk in asking for a revenue ruling is that they could take the decision farther than the IRS had even intended.
- Delegate Dance asked Mr. Dicks if he was making a recommendation for Ms. Myers to take back to the Attorney General's Office.
- Chip Dicks replied that the Attorney General's Office should at least discuss asking for a ruling. Without a revenue ruling, lenders are forced to rely on this case and that puts tax credit deals in jeopardy. Underwriting requirements are tight as it is, and no lender will lend on any tax credit deal as long as this uncertainty exists. There is an additional issue regarding whether the lender treats the taxes owed from up to six years ago as a default under the loan agreement. They would either need to require the parties to provide additional equity or treat the loan as a default. This opinion cannot stand long without clarification.
- Mark Flynn added that this may affect agencies and the business community, certainly VHDA is affected. It may be appropriate for a task force to delve deeper into the issue.
- Delegate Dance summarized the options the work group discussed, including letters from the Housing Commission and Governor, and recommendations for the Attorney General's Office.
- Chip Dicks suggested that the group would do better to work on state tax legislation as a substitute for the letters. Also, the group needs to decide whether to recommend the Attorney General's Office have an internal discussion for a request for a revenue ruling to provide some level of certainty for investors.
- Elizabeth Myers noted that it is important to realize at this point that this case is only currently applicable to this particular partnership with this particular tax credit. Until the opinion is applied to other credits, there is no way to know how far it will reach.
- Kathleen Kilpatrick agreed that they need to be careful about what questions are asked. The very notion that a credit is property is problematic on its face; for example, credits cannot be inherited. The situation is difficult because the court said the ruling applies only to the facts of the case, but at the same time made broad, sweeping statements. She indicated the only solution would have to be done through legislation, most likely at the congressional level.
- Mark Flynn again suggested setting up a task force rather than having several different groups approach the issue from different directions. It should include tax attorneys, the Attorney General's office, etc., because this ruling is a massive attack on issues of interest to the Housing Commission.
- Bill Ernst, from Department of Housing and Community Development (DHCD), agreed that attacking the opinion at a statutory level makes sense

if it would structure a safe harbor in Virginia. This is a small case nationally, but it poses such a threat that the decision cannot remain ambiguous. He agreed with involving staff from the Attorney General's Office, the Tax Department, and Legislative Services as well.

- Kelly Harris-Braxton, with Virginia First Cities, asked Ms. Myers if the facts of this case differ from a typical tax credit case.
- Elizabeth Myers answered these facts are extremely typical. The credit was created to be used by these partnerships because it is the only way to obtain investors and make the project economically desirable.
- Ted McCormack, with Virginia Association of Counties (VACO), asked Ms. Kilpatrick what she planned to do if congressional action fails and whether they were working on two tracks.
- Kathleen Kilpatrick answered that they were working on two tracks.
- David Freeman, with the City of Norfolk, asked whether they were tracking what other states were doing about this issue.
- Kathleen Kilpatrick replied that other states have joined in the industry amicus as well as the request to the Treasury Department to dialogue with regard to a safe harbor. She mentioned that they were coordinating closely with the National Trust for Historic Preservation, which is looking to the states in the 4th Circuit, particularly Virginia, to take the lead on this issue.
- Delegate Dance reminded the work group that the legislation had already been voted on in the previous motion. The group has been discussing pieces that will be incorporated into the legislation and who should be advising them as the legislation is drafted. She asked the group if the letters were still necessary.
- Delegate Oder suggested that the group needs to do something immediately. Legislatively, nothing can be done until 2012, and it may not be necessary to act upon the advice just given by Chip Dicks.
- Delegate Dance told the group that a letter from the Housing Commission will be drafted to United States Representatives as well as the governor. She asked the group if everyone agreed the letters should be drafted.
- Delegate Oder moved to take the course of action the chair just discussed, and it was properly seconded.
- All were in favor of the motion and the motion carried.

IV. Update on SB 1312; Repair of Derelict Buildings (McEachin, 2011)

- Chip Dicks; Manager, FutureLaw, LLC
- Mark Flynn; Director of Legal Services, Virginia Municipal League
 - Delegate Dance noted that at the previous receivership sub-work group meeting, Mr. Dicks and Mr. Flynn were asked to work on this legislation and report back when they were ready to present their proposal. Mr. Dicks and Mr. Flynn have not yet finished the proposal. Accordingly, this piece of the agenda will be bypassed until the next meeting.

V. Public Comment

- There was no public comment.

VI. Adjourn

- The meeting was adjourned at 2:06 P.M.

COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair
SENATOR MAMIE LOCKE, Vice Chair
ELIZABETH A. PALEN, Executive Director



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VIRGINIA HOUSING COMMISSION

Meeting Summary

Neighborhood Transitions and Residential Land Use Work Group House Room D, General Assembly Building August 16, 2011, 10:00 A.M.

Members present: Delegate Rosalyn Dance, Delegate Daniel Marshall, Delegate David Bulova, T.K. Somanath, Mark Flynn, Barry Merchant, Brian Gordon, Michael Toalson, Bill Ernst, Ted McCormack, Tyler Craddock, Chris Freund, and Connie Chamberlin

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate Rosalyn Dance, Chair**
 - The meeting was called to order at 10:11 a.m.

II. Update on HB 2045; Blighted Property (Ebbin, 2011)

- **Delegate Adam Ebbin**
- **John Catlett**; Department of Code Administration, City of Alexandria
 - The City of Alexandria has been working with all interested parties to reach a solution to the problem they have with incomplete and hazardous construction and rehabilitation projects. They have been working on the proposed legislation to craft a bill that encompasses a clear and present danger standard as well as the public health, safety and welfare elements that are already part of the draft. They have partnered with DHCD and will meet with them again to look at how to establish a tie with the existing Virginia Maintenance Code as another means to solve this issue.
- **Delegate Dance** asked Mr. Catlett to return to the September Neighborhood Transitions meeting to bring a more complete draft for the workgroup to discuss.

III. Update on SB 1312; Repair of Derelict Buildings (McEachin, 2011)

- **Jonathan Baliles**; Planning & Development Review, City of Richmond
 - This bill contemplates a process known as receivership, which allows the city to appoint a receiver to make necessary repairs to a derelict building. One of the major concerns with the original bill and the Receivership process was the expansion of the government's taking power. The City of

DELEGATE DAVID L. BULOVA
DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III
DELEGATE G. GLENN ODER

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR MARY MARGARET WHIPPLE

MARK K. FLYNN
T.K. SOMANATH
MELANIE S. THOMPSON

Richmond is currently developing modifications to the bill that do not expand taking power, but use existing taking power to acquire dilapidated properties. Existing authority for a locality to acquire derelict buildings include tax sales and the Spot Blight Abatement process. Under the revised bill, Receivership would allow those localities to appoint a receiver to repair properties that have already been taken using Spot Blight Abatement or tax sale proceedings. Receivership is intended to be used as a tool to encourage owners to renovate houses that are literally falling apart.

- **Delegate Marshall** asked whether this bill would apply statewide or if each locality would have to adopt the receivership process.
 - **Jonathan Baliles** responded that localities will have to adopt the receivership process since there are some localities that are relatively unaffected by the problem of derelict buildings.
- **Delegate Marshall** asked Mr. Baliles to explain the taking power the receivership process would rely on in greater detail.
 - **Jonathan Baliles** explained that the modified bill does not expand local governments' taking power, rather receivership relies on existing authority to allow a locality to repair derelict buildings. Localities currently possess the authority to take derelict buildings into their ownership using Spot Blight Abatement, for severely dilapidated buildings that meet the requirements specified in the Virginia Code, and through tax sales, for properties for which taxes have not been paid over a significant period of time. For example, if an owner is \$30,000 behind in taxes, and the property is seized through a tax sale, then a lien would be put on the property to make the necessary repairs. If the repairs cost \$30,000, now the owner must either pay off the \$60,000 in liens to retain ownership of the property or sell the property to the city or private party. Without receivership, the property would be auctioned off at a tax sale in its existing condition.
- **T.K. Somanath** passed around a picture of a dilapidated house located in the city of Richmond. The house pictured has been in its horrific condition for almost 20 years. The city of Richmond took the owner to court and the owner has not complied in a permanent fashion. Row homes adjoin the house, and it is critical that there be a way to enforce the current building codes and there must also be tools to improve blighted property. The city needs to have necessary tools to help neighborhoods and homeowners surrounding vacant property. The Better Housing Coalition (BHC) is in the business of community revitalization.
- **Lane Pearson**, with BHC clarified that receivership is limited in scope, and neutral in its affect on ownership. The process does not affect ownership rights, rather it affects the condition of the building. Once the property has already been seized by the city using existing authority, then receivership allows the city to appoint a receiver to repair the property.
- **T.K. Somanath** asked the work group to look at another issue regarding rehabilitation of foreclosed houses.
 - **Jonathan Baliles** mentioned that foreclosed properties is relatively good condition are not the target of this bill. The bill focuses on rehabilitating houses that are on the verge of collapse.

- **Delegate Marshall** noted that 10% of houses in the city of Danville are currently vacant, and blighted property is a big concern. The person living next door to a derelict building who is maintaining his home is severely disadvantaged by the presence of blight, and in some instances these dilapidated homes eventually become crack houses. He asked Mr. Baliles whether Spot Blight Abatement and tax sales are sufficient tools to protect owners who live next to blighted property.
 - **Jonathan Baliles** responded that Spot Blight Abatement and tax sales are both lengthy processes, filled with court appearances and delays.
 - **Mark Flynn**, with Virginia Municipal League, worked on the bill as well, and added that receivership actually benefits the original owner as well as the surrounding neighborhood. The city of Danville would use the existing tools of Spot Blight Abatement to take ownership of the property, and receivership would be used to bring the property to a livable condition, as long as it is feasible to do so. Without receivership, if the city uses Spot Blight Abatement to take the property and sells it in its existing condition, the original owner most likely receives nothing. If the city uses receivership, then the house can be repaired and subsequently sold, with net proceeds to be given to the original owner. This will reduce the time that the city is forced to take the original owner's property, since Spot Blight Abatement and tax sale proceedings are such lengthy processes. Additionally, during every step of the receivership process the owner can reclaim ownership of the property if he can pay off the liens and repair the building.
- **Delegate Marshall** mentioned that the problem in Danville is that the derelict houses have more than one lien on the property. If the city were to purchase a house to have it destroyed, and discovers there are \$40,000 in liens on a house worth \$10,000, the city will lose \$30,000 just by taking ownership. Then if the house is destroyed it will cost another \$10,000, and the city ends up spending \$50,000 on a vacant lot that might sell for \$500. It sounds as though the receivership process might at least raise enough money at a subsequent sale to pay off the liens on the property.
- **Delegate Dance** asked Mr. Baliles to finish drafting the new version of SB 1312 and present it at the September 6th Neighborhood Transitions and Residential Land Use Work Group meeting.

IV. Virginia Poverty Law Center's Landlord-Tenant 2012 Legislative Proposals

- **Beth Jamerson**, with Legislative Services, gave a brief overview of *Maciel v. Commonwealth*, the case that was the impetus for the Virginia Poverty Law Center's proposals.
 - The facts of *Maciel v. Commonwealth* involved a student who was locked out of his on-campus university-owned apartment after refusing to leave when his lease expired. The court held that the university did not need to first obtain a writ of possession from the court, as provided for under §55-225 of the Code of Virginia, before using self-help to evict Maciel because he signed a lease agreeing to vacate the premises immediately upon lease expiration. The statutory protection requiring a landlord to obtain a writ of

possession, was deemed waived by Maciel since he signed a lease with contrary terms. Although this right is non-waivable under the Virginia Residential Landlord and Tenant Act (VRLTA), the VRLTA did not apply to Maciel because certain types of rental properties (including student housing) are exempted from the VRLTA under §55-248.5 of the Virginia Code. If a tenant signs a lease with provisions that differ from §55-225, and the VRLTA does not apply, then the terms in the lease prevail over the statutory provisions, and any rights found in §55-225 that are contrary to those provided by the lease are deemed waived by the tenant.

- The *Maciel* court noted that the General Assembly has “taken no action to include in [§55-225] a ‘no waiver’ provision similar to the provision that is already found in the VRLTA.” Accordingly, any prohibition on waiver of rights found in §55-225 must be done legislatively.
- **Christie Marra**, with the Virginia Poverty Law Center (VPLC), explained three legislative proposals from the VPLC for the 2012 Regular Session.
 - The first proposal seeks to apply Virginia’s prohibition on self-help evictions equally to all residential tenancies, regardless of whether they are covered by the VRLTA. VPLC is concerned because most leases include a provision requiring the tenant to vacate the premises or surrender possession, and if the VRLTA does not apply, the landlord can evict the tenant through self-help without a court order. The biggest concern is for tenants renting single-family homes where the landlord does not rent the requisite number of properties under §55-248.5.
 - VPLC proposes adding language to §55-225 to prohibit lease terms that waive any of the rights provided under that section.
 - The second proposal requires landlords to issue receipts for rent payments to tenants that specify how the payments are credited to help tenants track and budget their funds. This proposal will provide tenants with proof of payment as well as alert them to any remaining balance owed on their rent. If a tenant is unaware that he is being charged a late fee, for instance, part of the rent payment could be applied to the late fee, and the full rent remains unpaid. In that situation, the tenant would then owe the remaining rent plus an additional late fee, and the amount overdue would continue to accumulate, without the tenant every realizing this was happening. Providing notice to the tenant of how each payment is credited would benefit everyone involved.
 - VPLC proposes requiring landlords to provide tenants with a written receipt issued on a standards form within five business days detailing the date and amount of payment, and how the payment has been allocated.
 - The third proposal addresses the unlawful detainer summons. The Virginia Code does not require a landlord to attach the lease termination notice to the summons for unlawful detainer. Whether the termination notice is attached varies by jurisdiction. Attaching the termination notice and filing this notice with the court promotes uniformity and judicial efficiency, especially in cases where one or both parties are unrepresented.

- VPLC proposes requiring that the lease termination notice be attached to the summons for unlawful detainer where a landlord is bringing an unlawful detainer action against a tenant.
- **Delegate Dance** explained that two members of the work group were unable to attend the meeting, and she was uncomfortable making any recommendations with regard to VPLC's proposals without their input. There was a consensus among the work group members to move this issue to the September 6th Neighborhood Transitions meeting. Delegate Dance asked for comments from those members present.
- **Brian Gordon**, with the Apartment and Office Building Association (AOBA), noted that although AOBA's members are not opposed to resolving discrepancies in the law, they are concerned that the change recommended by VPLC's first proposal could apply to commercial, industrial, and retail properties. Commercial leases often contain waivers that need to be preserved. He suggested limiting the scope of the proposal to residential rental properties only.
 - **Christie Marra** indicated that VPLC has no objection to limiting the scope of the proposed bill to residential leases.
- **Brian Gordon** mentioned that with regard to the second proposal, issuing receipts for rent payments to tenants is considered routine, and AOBA is not opposed to requiring this practice legislatively. However, the wording of the proposal is restrictive and suggests the receipt be issued on a form provided by the Virginia Supreme Court. This requirement, as well as the five-day timeframe, could prove to be difficult administratively for many of AOBA's members.
 - **Christie Marra** emphasized that the key to the proposal is that a written receipt be provided that details how the payment was credited. If increasing the timeframe and type of receipt issued allows for easier compliance, then VPLC can work together with members of this work group to find more agreeable terms.
- **Delegate Dance** asked Ms. Marra to modify the proposal to reflect Mr. Gordon's concerns by the September 6th meeting.
- **Tyler Craddock**, with the Virginia Manufactured and Modular Housing Association (VMMHA), mentioned that in 1994 approximately 35% of rental properties in the Commonwealth were covered by the Virginia Landlord Tenant Act (VLTA), but not the VRLTA. He asked Ms. Marra what percentage of residential rental properties fall under the VLTA but not the VRLTA currently, and what types of properties are covered by the VLTA rather than the VRLTA.
 - **Christie Marra** responded that VPLC does not have data regarding how many properties are covered by the VLTA and not the VRLTA. The properties that fall under that category are typically located in rural areas, and this is the biggest distinguishing factor. Landlords in rural areas are more likely to rent only one or two properties, and this prevents those properties from falling under the VRLTA.
- **Delegate Bulova**, to better understand the situation with regard to student housing issues, asked Ms. Marra whether student housing is subject to the VLTA or if there is a separate body of law that governs student housing.

- **Christie Marra** explained that any rental property that does not come under the VRLTA falls under the VLTA. As far as she is aware there is no separate set of statutes that govern student housing.
- **Delegate Bulova** mentioned that VPLC is mainly concerned with single family residences that are not covered by the VRLTA, but he noted that student housing would necessarily be swept under the no-waiver provisions with the broad language found in the first proposal. He asked if there are other types of housing that they should be concerned with when including a no-waiver provision in §55-225.
 - **Christie Marra** acknowledged that VPLC is indeed mostly concerned with single family rental properties, and implied that the VPLC would redraft the language to exclude student housing and commercial leases. She conceded that there may be other types of housing situations that may need to be further investigated to determine whether they should be exempted as well.
- **Delegate Dance** encouraged Ms. Marra to work with the work group members on the concerns expressed at the meeting, and prepare a presentation for the September 6th meeting.

V. Public Comment

- There was no public comment.

VI. Adjourn

- The meeting was adjourned at 11:09 a.m.

COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair
SENATOR MAMIE LOCKE, Vice Chair
ELIZABETH A. PALEN, Executive Director



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VIRGINIA HOUSING COMMISSION

AGENDA

Affordability, Real Estate Law, and Mortgages Work Group/Neighborhood Transitions and Residential Land Use (Joint Workgroup Meeting) House Room C, General Assembly Building September 6, 2011, 10:00 A.M.

Members present: Delegate John Cosgrove, Delegate Rosalyn Dance, Delegate Daniel Marshall, Senator Mary Margaret Whipple, Delegate David Bulova, Mark Flynn, T.K. Somanath, Judson McKellar, Kelly Horne, Robert Bradshaw, Brian Gordon, Connie Chamberlin, Alexander Macaulay, Chip Dicks, Kelly Harris-Braxton, R. Schaefer Oglesby, John Jordon, Tyler Craddock, Barry Merchant, Michael Toalson, Bill Ernst, and Ted McCormack

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate Dance** called the meeting to order at 10:07 a.m. and asked members of the work group to introduce themselves.

II. Update on Manufactured Home Titling

- **Tyler Craddock**, Executive Director, Virginia Manufactured and Modular Housing Association (VMMHA)
 - VMMHA has been working with major stakeholders, including the Department of Motor Vehicles (DMV) on the issues surrounding manufactured home titling. Marc Lifset, of McGlinchey Stafford is here on behalf of Wells Fargo, and he will explain these issues.
- **Marc Lifset** introduced himself, and began his presentation by describing problems with the current system of titling manufactured homes.
 - First, unmarketable titles on existing manufactured homes make it impossible for the current owner to refinance at a lower interest rate, and for a new buyer to obtain financing to purchase the home. The title is unmarketable if the process of converting a manufactured home affixed to a permanent foundation to real estate was not properly followed initially. Lenders require title insurance on the home before providing financing, as well as an ALTA 7.1 endorsement, which ensures that the title is marketable. This poses a problem for sellers and buyers of used

DELEGATE DAVID L. BULOVA
DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR MARY MARGARET WHIPPLE

MARK K. FLYNN
T.K. SOMANATH
MELANIE S. THOMPSON

manufactured homes, as well as current owners seeking to refinance. By providing a clear and coherent procedure for titling manufactured homes, those homes will not only hold their value, but also increase in value over time.

- The second major issue with the current system of titling affects manufactured home owners seeking to upgrade their homes. Owners with equity in their manufactured home often trade in their current home for a larger or more energy efficient home. Currently, there is no process in Virginia for re-titling a manufactured home that has been severed from real estate.
- A third feature of the proposed legislation is the ability to surrender the manufacturer's certificate of origin (MCO) at the first retail sale rather than using the MCO to apply for a title and then surrendering it, as is the current procedure. Additionally, the proposal provides for official public records with the DMV as well as the local land records to show that a manufactured home affixed to land has been converted to real estate. Including this in the local land records ensures the marketability of a manufactured home title.
- **Mark Flynn** inquired whether the legislation provided for a dual titling process.
 - **Marc Lifset** responded that it did not, and explained the recording process under the proposal. At closing, the buyer will receive a deed in the property and sign a deed of trust for the lender, and then the closing agent will prepare a document known as an affidavit of affixation, which states the homeowner's intent for the home to be treated as real estate. The affidavit of affixation is recorded in the land records along with the deed and the deed of trust. A certified copy of the affidavit is then delivered to the DMV with either the title or the MCO. To obtain the ALTA 7.1 manufactured home endorsement to a title policy, the title company is ensuring that there are no personal property liens on the home that would impair the title. In order to comfortably do this, the title company would need to look in both the personal and real property records.
- **Connie Chamberlin**, from Housing Opportunities Made Equal (HOME), asked Mr. Lifset about the bankruptcy implications of the proposal.
 - **Marc Lifset** replied that the conversion procedure is not mandatory, and that homeowners will be able to choose whether to convert their manufactured homes to real estate.
- **Connie Chamberlin** inquired whether a homeowner would understand the implications of converting his home to real estate.
 - **Marc Lifset** acknowledged that homeowners would not understand this option without some education on the matter. He added that there are states that include in the procedure a disclosure regarding rights and obligations for homeowners when deciding whether to do chattel or real estate financing. Although a disclosure is not included in this proposal, it could be added to the draft.

- **Mark Flynn** mentioned that if the homes are converted to real estate rather than titling the home as personal property, the debtor benefits from the Homestead exemption.
- **Delegate Marshall** asked Mr. Lifset to further explain the option of the homeowner to convert the property to real estate. Until this point the work group was under the impression that the legislation would be mandatory and would apply to the titling process of all manufactured homes.
 - **Marc Lifset** answered that in order for the home to be real estate, it needs to be placed on a foundation and installed according to law; the law is modeled after the HUD code currently in place in Virginia. An owner buying a home can do one of two things, 1) can get a title and leave the home titled as personal property or 2) treated as real property and then the title would go through the surrender procedure.
- **Delegate Marshall** asked what the proposed legislation is to accomplish if an option is offered that already is currently in the Code of Virginia; he mentioned that he titles his car, would a person need to title as realty in order to receive financing?
 - **Marc Lifset** said that option exists in current law, nothing that says a person needs to surrender the title, just trying to improve the process
- **Delegate Marshall** noted that if then when the consumer was buying he would probably be forced into taking the realty option in order to secure financing.
 - **Marc Lifset** said there are lenders who finance manufactured homes with out title surrender, important to them that there be an option, would not say consumer forced to have their homes converted to real estate; but those loans are purchased by Fannie and Freddie and this gives the borrower access to that capital and those rates.
- **Delegate Marshall** asked if he so chooses this option would he get the lower interest rate; and the response was yes.
 - **John Ricks**, an attorney for Manufactured Home Association, said that he believes that there is some confusion in existing Virginia law. He said that if a manufactured home is put on a permanent foundation, the owner has the option now to surrender the title to DMV. If the statute says thereafter the home treated as real estate, in simplified form, the DMV takes those titles and the owner comes back a few years later asking for a new title and DMV says no you surrendered it; suggestion is to allow a reissue if they go they go back to DMV and have DMV keep a record of the transaction.
- **Delegate Dance** inquired if perhaps only a simple fix is needed for this proposed legislation instead of a more complicated bill?
 - **John Ricks** answered that yes, it seems this would address the problem.
- **Chrissy Tomlin**, a loan officer for Wells Fargo, said she is a specialist in manufactured home financing; most loans go through FHA and they require a surrender of title or the person can't get financing. It is necessary to surrender the title in order to get financing and to get lower loan rates. HUD would never have been able to sell foreclosures if there were not titled homes; isn't much of an option for titling if you want to take advantage of conventional financing.

- **Delegate Marshall** wondered as far as tax when a surrender of title takes place does the tax rate change.
 - **Kristee Kelly**, from Virginia Manufactured Housing Title, LLC., said that as the rate changes, the owner pays more taxes in the long run and the house valued at a lesser amount than it would if realty.
- **Delegate Marshall** asked what percent is left as personal property. If the personal property depreciates, does the tax decrease on the homes?
 - **Kristee Kelly** replied that most personal property exchanges are done as cash purchases and most lenders require the title to be surrendered and converted; her company gives purchasers a copy of the DMV title so they can convert it to realty. She would assume that the value does decrease; can't imagine it being beneficial to the buyer to allow the home to remain personal property.
 - **Mark Flynn** said there is an impact on tax revenues to localities, whether personalty or realty. And there is an impact on tax revenues for taxes if taxed at a personal property rate versus a real estate rate; it is complicated because homes that are attached tend to appreciate as opposed to personal property. At the last meeting the proponents said they would get some further information and he wonders if they have made any progress in that regard.
 - **John Ricks** noted that there is an annual report at DMV called FIPS; you have to ask DMV for it and go to tax section of DMV, the report tells you on an annual basis, county, and city by city, where the taxes are collected on manufactured homes. The law says the tax goes to the locality where home is cited. Although he hasn't seen that report recently, at times equaled approximately \$3 million dollars in local revenues.
 - The local MLS book, shows that manufactured homes on permanent foundations are appreciating, but they don't appreciate quickly—even in a hot market at the same rate—but they are appreciating and it's not minimal. He wants localities to see there is more revenue there for them than if the homes remain personal property. The Code says homes are taxed as personal property; when the title is not surrendered on manufactured homes, they're personalty and valued like a car, and in five years there is nothing left and the locality loses out on revenues. If the home is on a permanent foundation, it will be assessed as a stick built house, but this still is not completely resolved.
- **Delegate Marshall** inquired if there was any data for homes sold and what percentage are classified as real estate and which are classified as personal property.
 - **John Ricks** replied that no, he doesn't know if that data exists; he has been trying to find that information for older manufactured homes; more homes for sales becoming real estate is his industry's sense, because manufactured homes don't move much unless they are in a home park.

- **Jerry Hackett**, with Clayton Homes, Knoxville, said his company's major initiatives are focused on finding people in homes that have built up equity and encouraging them to purchase a newer home. Now his company is able to pull homes off a piece of property to get better building standards, and if the home is attached to land they cannot do this. If the home is secured to a piece of land with a permanent foundation (and sometimes they are not because people want to stay on particular land because it is family land), but they want a new home on the same land, it then saves costs. This is a major opportunity for his company as well as providing increased taxes for the locality. Taking an older home off property and putting a bigger home that is worth more in its place will have appreciated value. The banks want to finance these homes; it is a win-win situation for everyone involved.
- **Senator Whipple** said her understanding is that his interest is in being able to sell the previous home and she wondered is there a problem achieving that now?
 - **Jerry Hackett** said that you can't obtain financing without a title; if the home is severed from the land they are not able to take that title. In the next two years there will probably be a lot of activity in this area. When they pull that used home off the land, they need to find financing for it; they get a lot of calls for older, used homes, and it is important for them to be able to re-sell.
- **Mike Toalson** urged Tyler Craddock and John Ricks to work with stakeholders and bring a draft back to the group. He expounded that he felt that manufactured housing is a very important component of the housing market and that it is critical that this somehow gets straightened out, and that financing on existing homes is a critical issue for the Commission to resolve.
- **Delegate Dance** asked for Tyler Craddock and John Ricks and the others to work together and once they have a written draft the work group will reconvene and see if there is something to move forward to the full commission.

III. Update on SB 830 Fair Housing Law (Locke 2011), and HB 1578; Fair Housing Law (Dance, 2011)

- **Delegate Dance** explained that various housing groups, including the Virginia Association of Realtors (VAR) and HOME, are still developing improvements to the bill, and it is not yet ready to be heard before the full commission.
- **Senator Whipple** asked for a brief description of the issues surrounding the bill.
 - **Mark Flynn** explained that the legislation was sent back to the Housing Commission for review after failing to pass last session. There were concerns that the broad language in the bill could be used by someone who has a complaint about a zoning action taken by a locality on any project to file a complaint in circuit court to prevent the locality from proceeding with the zoning. He suggested looking at the zoning provisions in Title 15.2 of the Code of Virginia to see if the proposed bill could be included in that title. He also suggested narrowing the language to specify what localities may or may not do in that regard to providing affordable housing.

- **Connie Chamberlin** explained that HOME believes the bill addresses a very real problem, and HOME is happy to work with any interested parties to draft acceptable language.
- There was a consensus that the bill is still being discussed among stakeholders and is not yet ready to appear before the full Housing Commission.

IV. Update on SB 1312; Repair of Derelict Buildings (McEachin, 2011)

- **Jonathan Baliles**, with Planning & Development Review of the City of Richmond, explained that the bill that was introduced by Senator McEachin (SB 1312, 2011) is almost unrecognizable, and has been amended to eliminate any issues that are politically untenable.
- **Delegate Dance** noted that Chip Dicks, representing VAR, was unable to attend the last meeting where this bill was discussed. She asked for his input on the revised bill draft.
- **Chip Dicks** explained that he worked extensively with Mark Flynn and the City of Richmond to craft a bill proposal that accomplished the City's goals without infringing on personal property rights. The original SB 1312 (McEachin, 2011) has been streamlined and structured so that it supplements existing authority localities possess to incorporate the receivership process. This proposal restricts the authority of a locality to take personal property. The structure must be declared blighted by the City, which is a determination made under existing law. Only in that circumstance can a court appoint a receiver to make the necessary repairs to the property. The proposal also includes language that subjects this process to eminent domain under Section 1 to build more protections into the legislation.
- A motion to take up this issue before the full Housing Commission at the afternoon meeting was properly moved and seconded; all were in favor and the motion carried.

V. Virginia Poverty Law Center's Proposed Landlord-Tenant Bills

- **Christie Marra**, with the Virginia Poverty Law Center (VPLC), told the Commission that VPLC had been working with the association of realtors and Apartment Owners Association to address their concerns with the proposed legislation. Ron the concerns raised at the last meeting of the Neighborhood Transitions and Residential Land Use Work Group. She noted that they had made revisions to the proposal applying a prohibition on self-help by landlords to dispossess tenants of a rental property to all residential leases.
- **Chip Dicks** explained that the purpose of the proposal is to ensure that in all residential tenancies, no landlord can physically dispossess residential tenants without going through the lawful detainer process. There is no clear position stated in the Virginia Landlord-Tenant Act (VLTA) applicable to single family houses. This proposed legislation makes clear that the prohibition on self-help is only applicable to residential single family houses, and single family units. The goal is to preserve the right of landlords in a commercial lease to physically dispossess tenants, and disallow this act with regard to residential tenancies. The proposal needs minor language adjustments, but should be completed shortly.
- **Christie Marra** explained the second proposal from VPLC addressing § 8.01-126. The intent behind the proposal is to streamline the unlawful detainer process. This

will add to the Virginia Code a requirement that when a landlord files an unlawful detainer, he must also attach the termination notice that is already required to be sent to the tenant. There are still some minor issues that need to be resolved with regard to this proposal.

- **Chip Dicks** mentioned that the concern regarding this proposal is that the general district courts have moved toward e-filing. Each notice of termination is unique to that particular landlord rather than a standard uniform court form from the court's database, and the court does not have the technology to accept those forms for the purpose of e-filing. There are also concerns regarding additional fees and sheriffs' services.
- **Christie Marra** explained the third proposal from VPLC, which requires landlords to provide tenants with a written receipt for rent payment. The proposal would require a landlord to notify a tenant that the tenant has a right to request an accounting of how his rent payment is applied every month. The purpose of this requirement is to prevent a tenant from accumulating late fees and other charges as a result of those fees are being deducted from each monthly rental payment without the tenant's realization. A consensus on this proposal has not yet been reached among stakeholders.
- **Delegate Marshall** asked Mr. Dicks if there is a Code section that handles accounting and late fees as they pertain to cable and utilities.
 - **Chip Dicks** responded that he is unfamiliar with that area of the law. VPLC is attempting to provide a notification requirement for tenants who do not understand that late fees carry over into each month, and subsequently do not realize they are accruing these fees. From a policy standpoint, it makes more sense to require landlords to notify tenants that they can request a copy of their rental payment records rather than burdening landlords with a requirement to provide this record before any such request has been made.
- **Senator Whipple** inquired whether the concern is with landlords providing notice of the rent payment record or simply providing a receipt. She pointed out that issuing a receipt for rent payment is standard practice for landlords.
 - **Chip Dicks** explained that funds are often collected by landlords electronically. Most landlords will not accept cash for rent payments because of accounting concerns and other issues. Money orders are a common way of paying rent for low-income tenants who do not have access to a bank account or any type of automatic payment. In fact, the General Assembly has adopted legislation permitting landlords to require electronic rent payments to eliminate some of the accounting issues with cash rent payments. This proposal addresses a situation where the tenant does not have access to electronic payment methods. Landlords will be discouraged from accepting money orders for rent if the bill required them to issue a detailed receipt of how the payment was applied every time. However, the tenant should still have an opportunity to review his rent payment history. Requiring the landlord to provide a tenant with a copy of the tenant's rental payment record upon request addresses both of these issues. Additionally, this proposal only applies

to leases under the Virginia Residential Landlord-Tenant Act (VRLTA), and does not apply to single family houses under the VLTA. He indicated that there is more work to be done to the language of this proposal to ensure a consistent standard for both multi family and single family tenants.

- **Christie Marra** mentioned that while accepting only electronic rent payments and issuing a receipt is fairly standard practice, there are landlords who do accept cash and do not issue receipts.
- **Delegate Dance** acknowledged that all three proposals need additional work before being presented to the full Commission.
 - **Christie Marra** agreed that additional revisions are necessary, and informed the work group that a consensus on the language has almost been reached among all stakeholders on the proposal addressing self-help eviction.
- **Delegate Dance** requested that Ms. Marra work with stakeholders on the proposals and present the updated drafts to the full Commission at the November meeting.

VI. Public Comment

- There was no public comment.

VII. Adjourn

- The meeting was adjourned at 11:20 p.m.



VIRGINIA HOUSING COMMISSION

Meeting Summary

Receivership Sub-Work Group 6th Floor Speaker's Conference Room, General Assembly Building June 6, 2011, 10:00 A.M.

Members present: Delegate Rosalyn Dance, Delegate John Cosgrove, Mark Flynn, Chip Dicks, David Freeman, Vaughn Poller, Bill Ernst, Jennifer Wicker, Kenny McLemore, Jon Baliles, Bonnie Ashley, Julie Seward, Lee Downey, Bob Newman, Nicholas Buccola, Ali Faruk, Lane Pearson, and Kally Harris Braxton

Staff present: Elizabeth Palen, Beth Jamerson

I. Welcome and Call to Order

- Delegate Rosalyn Dance, *Chair*
 - The meeting was called to order at 10:03 AM.
 - Each member of the sub-work group introduced himself.

II. SB 1312; Repair of Derelict Buildings (McEachin, 2011)

- Jon Baliles, from the City of Richmond Planning and Development Review, began the meeting by summarizing the receivership process and why it is needed in Virginia. Receivership is a new tool for localities to rehabilitate vacant, residential buildings. It is used in other states, and has been especially successful in Baltimore, Maryland. The properties targeted by receivership are those that are visibly uninhabitable. Sometimes these homes are kept vacant for decades, have numerous Code violations, and create safety issues for other residents in the neighborhood. He distinguished receivership from spot blight and eminent domain in that receivership guarantees the house will become habitable before being sold. Receivership can be an especially effective tool for Richmond due to the high number of vacant properties in the city.
- Delegate Dance yielded to Delegate Cosgrove to hear his concerns regarding the bill and to hear from other members of the group.
- Delegate Cosgrove's concerns included the procedures by which a building will be taken over, the costs involved in doing so, and the bill's interference with private property rights. It is necessary, he believes, to keep property rights at the forefront of these discussions.

- Mark Flynn, of the Virginia Municipal League, expressed his support for the bill, citing the benefits to localities as well as property owners. Most often, derelict property has fallen to that condition due to financial trouble or problems with the title, and this process allows the owner to be a participant in rehabilitating the property. If the owner is able to pay off the receiver's lien at any point during the process, then he retains ownership of a newly habitable property. Otherwise, the house is sold and the owner receives more money than if the city had used its existing authority under spot blight statutes or eminent domain. He conceded that in some receivership cases there will be a taking. However, the property owner will receive more money using receivership than through an eminent domain taking. Furthermore, the receiver must answer to the court to show what costs will be incurred during the rehabilitation of the property. Those costs include the renovation expenses, taxes, any private liens that have attached to the property, and possibly an administrative fee to the city for managing the receivership program. In addition, the receiver should be paid a reasonable profit for bringing the property up to Code as this provides a service to the public.
- Jon Baliles added that the receiver must submit a plan to the court before repairs may take place. He estimated renovation costs at \$20,000–\$60,000 per housing unit. The total number of vacant residential buildings in Richmond is around 2000, but that number only includes houses that are habitable. He estimated the number of houses that are uninhabitable and therefore subject to this process at approximately 500–600.
- Delegate Dance expressed concern over a situation in which a house may have sentimental value to a family who cannot afford to make the necessary repairs, but would like to keep the house in the family.
- Jon Baliles reiterated that if the house was being lived in it would never go through the receivership process; receivership only applies to vacant homes.
- Lane Pearson, from the Better Housing Coalition, explained that each receivership case has case-specific issues the judge will need to weigh in deciding whether to allow the property to go through the process. The judge may decide to protect that house because of its sentimental value. However, the goal to rid the community of blighted and nuisance properties needs to be kept in mind when making these decisions. Although the property may be sentimental to a family, their neighbor may see this house as a fire hazard, and that is something the judge will need to consider.
- Mark Flynn emphasized that in addition to being vacant, the property must also be boarded up and have been disconnected from utilities for a period of six months to be eligible for receivership.
- Delegate Dance directed the group's attention to line 58 of the bill, which reads that the receiver may enforce the lien on the property through a sale at a public auction.
- Delegate Cosgrove noted that although the property owner can retain ownership by paying the receiver's lien at any time during the process, they are unlikely to be in a financial position to do so if they cannot afford to renovate the property in the first place.
- Delegate Dance expressed concern that one judge's decision will determine whether a house will go through the receivership process or not. She asked the group if

there is a way to limit the judge's discretion over the determination that the house is eligible for receivership.

- Jon Baliles brought up the Oliver Lawrence cases. Those houses had repeated Code violations and a high incidence of criminal activity. In those instances a judge would easily be able to determine that the house is harming the community. A house that has sentimental value is a different situation, and most judges would probably determine it is not a problem property and would not be a case for receivership.
- Delegate Dance emphasized judges' latitude needs to be tightened so they do not have complete discretion in determining a case for receivership. She stressed that as lawmakers who represent the people who will be affected by this bill, they need to address concerns as to how each judge will handle a particular situation in regard to receivership.
- Mark Flynn suggested adding another requirement to what the petitioner must prove in subsection B(2) at line 21. That additional requirement could be a condition that negotiations with the owner have been attempted and proven unsuccessful, which would also allow the judge to hear the factual background behind the house rather than just hearing about the state of the house. Another way to obtain control over judges' discretion could be to restrict the types of repairs the court may authorize under subsection E, beginning at line 46. Restrictions could include a requirement that repairs remain consistent with the characteristics of the surrounding homes and neighborhood. Then if the receiver wants to add unnecessarily expensive features, such as granite countertops, the judge would be unable to authorize that type of repair and at the end of the process the owner would have a more reasonable chance to repay the lien and retain ownership of the property.
- Delegate Dance commented that in such an instance the property owner would participate in the development of the repair plan and be involved in ensuring the property was brought up to Code without incurring unnecessary expenses.
- Jon Baliles stressed that the property owner would be involved in every step of the process, because the title still belongs to the owner. Anytime there is a hearing in court regarding the property the owner will attend and be heard, unlike eminent domain.
- Mark Flynn commented that there has to be a finding by the court up front that the property is eligible for receivership, and the proposed bill provides for the owner's participation as a necessary party throughout the receivership process.
- Delegate Cosgrove voiced his concern regarding the affect this bill could have on military personnel. He pointed out that members of the military may be deployed for as long as three years at a time. In a situation where a house is inherited by a member of the military while overseas, it remains vacant, and the building becomes derelict, that military member could lose his family home.
- Chip Dicks, of FutureLaw, mentioned that the federal Servicemembers' Civil Relief Act, which protects military personnel from foreclosure, trumps any law at the state level. However, the act does not specifically reference receivership.
- Delegate Cosgrove stated it needs to be clear the bill is subject to the federal law. He also expressed concern regarding older homes. Some older residences may have wood burning stoves or lack other modern amenities. Those houses may already be

close to a decrepit state. To illustrate the potential problem, assume an older lady living alone in one of those houses has to be moved to a nursing home and the house becomes derelict in her absence. It would be nearly impossible for her to pay for the repairs at that point and keep the house. The group needs to consider what the requirements would be for repairing a building to a reasonable state. Does a reasonable state mean meeting the Building Code? Replacing the wood stove with gas heat? There are many older towns, such as Lovingston, in Virginia, and with the state of the economy many people living in older homes may find themselves unable to perform basic maintenance repairs on their houses. These are all issues this group needs to keep in mind when discussing receivership.

- Delegate Dance asked Mr. Dicks for recommendations concerning the bill.
- Chip Dicks had several comments and suggestions.
 - He first noted that he shared Delegate Cosgrove's concerns.
 - Under the Uniform Statewide Building Code, repairs need to be done consistently with the current Building Code. When a building reaches the point of being boarded up, the basic elements of the unit, such as HVAC systems, have deteriorated significantly, which triggers the new standards under the current Code. Localities will make renovations that may be more extensive and costly than the owner is able or willing to do himself for the property.
 - The derelict structures legislation provides for tax abatement, and that should be cross referenced in this bill to incentivize the property owner to make repairs to the building. The tax abatement is not statewide; therefore this bill needs to contain language that allows the tax abatement under local ordinances in conservation or rehabilitation areas.
 - All of those provisions should be included as a pre-condition before going to court so that the property owner has been given every opportunity to make repairs to the building. Receivership is a last measure, because someone is ultimately losing property rights.
 - This group previously discussed making language changes at line 74, specifically that "may" should be changed to "shall." Another concern with the same paragraph is with lines 79 and 80, which read the posting of a bond is sufficient to secure performance of the repairs. The problem with requiring a bond is that the bank has to approve letter of credit language acceptable to the locality, and this is an extremely difficult process. In the end, the receiver would need to put up the bond himself, which requires 100 cents on the dollar in cash. If a letter of credit or bond has to be collateralized with cash, and then the receiver has to pay cash to repair the property, he has to produce enough cash for twice the cost of repairs up front, which is too great an encumbrance for the owner.
 - The real controversy regarding this bill is that the receiver can take title of the property, which is found in lines 58-68. Divesting an owner of his property rights is a highly sensitive political subject, and the Commission found it became an issue with the derelict structures legislation even though that bill had nothing to do with eminent domain. Even if this group manages to draft acceptable language addressing the other concerns, the

question will ultimately turn to the taking of legal title. People will lose property rights as a result of this bill, which is bordering on eminent domain. The Commission's response to that concern is that in many ways this legislation creates a better outcome for the owner than would result under eminent domain and tax sales. There is no right to surpluses under a tax sale, and although this bill provides a better process than what the taxpayer currently faces, the fact remains that this bill is enabling legislation to take away property rights. He asked if there is a way around actually taking title or if doing so would defeat the purpose of the bill.

- Jon Baliles confirmed removing the provision allowing the taking of title would render the bill pointless. The rights of property owners who live in the area surrounding the dilapidated house also need to be kept in mind. A tax sale can occur, but if the house is sold at auction in its current state it adds to the neighborhood's comps and depresses property value. If the house is taken through receivership, it sells for more than it would have at a tax sale, which helps prevent the comps from going down. The map of crime areas shows a high correlation between vacant buildings and crime density. While there is a property rights issue, at some point the safety and well-being of the surrounding neighborhood has to be taken into consideration. There was a house fire at a vacant residence in Church Hill that could have burned the entire block to the ground. The state forces people to have their cars inspected every year or it will impound their vehicles. If the owner makes the necessary repairs, he can reclaim his vehicle. This is a taking by the state enforced to protect the safety of other drivers.
- Chip Dicks mentioned that the concern with the derelict structures legislation was that it divests property rights, although there is no eminent domain or takings power in any form in that bill. He wondered if a receiver's lien became tantamount to a tax lien, would the locality then have tax lien authority to take the property.
- Bonnie Ashley, with the City of Richmond, answered that ultimately, yes, the locality would have the authority to take the property. In amending this proposed legislation it is important to keep in mind the benefits to the property owner, including the necessity of the owner's participation and his sharing in the surplus from the sale of the property. Receivership is more favorable compared to the other tools that already exist, and provide the locality with an option besides eminent domain or a tax sale. This bill is a way of providing a solution that benefits the property owner as well as those who live in the vicinity of the property.
- Delegate Dance advised that there be some flexibility with the bill, and warned drafting the language too narrowly will likely prevent the bill from getting as far as the full Housing Commission. She noted that it is often easier to amend or modify existing legislation, and wondered if there is a way to do that in this situation.
- Jon Baliles responded that the city is open to amending the language and agreed with all of Mr. Dicks' suggestions, but unless there can be a taking there is no incentive for the property owner to repair the building. Oliver Lawrence is a perfect example of someone who worked the existing system for years without consequence.
- Delegate Dance replied Oliver Lawrence is only one person, and legislation needs to deal with the majority.

- Mark Flynn expanded on Chip's recommendations and suggested rather than include a sale provision in the bill, make repair costs equivalent to a tax lien. Doing does not preclude a right of sale, and would allow the locality to recover the costs of the repairs, but it could take as long as two years to recover the costs. He suggested renting the property during those two years as a possible way to recover costs sooner.
- Chip Dicks noted that the concept of a locality spending revenue to make repairs that constitutes a lien on the property already exists in the general lien provision of the Virginia Code. Creating the ability to take the house through a receivership lien on parity with a tax lien gives localities the authority they need without this bill; it creates the process of receivership without adding any additional taking authority.
- Mark Flynn mentioned that under §15.2-906, if a locality secures a building, the costs in doing so may be collected by the locality as taxes are collected. Again, the problem with this approach is the two-year recovery time frame, which is not a viable option without a revenue stream.
- Jon Baliles remarked that if the receiver had to wait two years before the possibility of recovering his investment, the incentive to make the repairs is lessened.
- Delegate Dance suggested by making the repairs, the receiver will build goodwill with the community, and perhaps that will be enough of an incentive to do the work. Repairing those structures provides a benefit to the city, and in two years the building will be sold.
- Chip Dicks emphasized that instead of the local government supplying the money for the repairs, a private investor is providing the funding. Under the proposed legislation, the locality will be able to take property that was repaired by a private investor. This all goes back to the discussion involving *Kelo v. City of New London* that has been ongoing in the General Assembly since 2006. This is the most controversial part of the proposal. The locality needs to provide some of the capital for the repairs, perhaps through a derelict structures fund, because otherwise the process involves a private party paying for the rehabilitation expenses and the government taking title of the property.
- Mark Flynn reiterated that the authority to take a private structure already exists with spot blight statutes, but the locality has to provide all the funding throughout the process. The value of receivership is that it protects property rights and expectations of surrounding neighbors, it only applies to properties that are subject to repair, and private money is used to fund the process.
- Lane Pearson mentioned that in Maryland there is a post-sale right of redemption, and suggested expanding foreclosure powers. He wondered if a post sale-right of redemption might appease those who are concerned with eminent domain.
- Chip Dicks responded that he did not think a post-sale would assuage eminent domain concerns. He advised the group not to get involved with foreclosure issues at the moment. Lenders would be concerned about a post-sale since that might translate into their world.
- Delegate Dance acknowledged that although there is no housing fund for the entire state, there are localities that have housing funds.
- Chip Dicks noted Arlington is one of the localities with a housing fund.

- Jon Baliles answered that although Richmond has a housing trust fund there is currently no money in the account. He suggested using receivership as a trial program and limiting its applicability to cities.
- Mark Flynn suggested limiting the applicability by requiring a certain population density. Ultimately, though, limiting the process to cities does not resolve the concerns over this bill.
- Jon Baliles disagreed because receivership is a tool to solve an urban problem. The bill is not intended to target property in more rural areas. He suggested limiting the bill by somehow tying it to the state poverty average.
- David Freeman, with the City of Norfolk, agreed that density might limit the bill appropriately.
- Jon Baliles reiterated that receivership is needed in cities.
- David Freeman agreed that the presence of vacant buildings is an urban problem, as the greatest number of both vacant buildings and crime are found in the northeastern quadrant of Richmond.
- Kelly Harris Braxton, from Virginia First Cities Coalition, commented that many cities have expressed an interest in receivership, but the biggest concern is the property rights issue. The concern with limiting receivership to cities is that it is a slippery slope and could easily spread throughout the state.
- Jon Baliles mentioned when a receivership bill was first proposed in Maryland, it wouldn't pass statewide so it was limited to Baltimore. Now other cities, including Frederick, are asking that the bill apply to them as well. Limiting the bill to one city is a focused way to try the process on a trial basis.
- Delegate Cosgrove explained a bill limited in such a way is what is referred to as setting up the proverbial Christmas tree, adding an ornament every year. There are numerous instances where the General Assembly limits a bill and year by year it is amended to broaden the limitation. He revealed that he is wary of bills that do this, and he would not support a bill tailored to one locality. He asked about the genesis of the bill.
- Delegate Dance answered that it came from the city of Richmond. She expressed her doubt that the bill, as proposed, would even be heard before the full Commission. She suggested amending an existing bill instead as a way to ease into the process.
- Mark Flynn suggested incorporating a requirement that the locality has made a declaration of spot blight before the property could be eligible for receivership. Once spot blight has been declared, the building is going to be torn down or repaired. Adding a requirement of spot blight would prevent this bill from being used on a farmhouse or similar structure, because it wouldn't be a hazard or a nuisance, and probably would not be close to anyone else's property. This requirement would limit the properties the bill could apply to, plus the building would already be about to change ownership.
- Lane Pearson asked if this would be a finding at the beginning of the process.
- Mark Flynn answered he is not sure what the necessary steps are in the spot blight process, but they would want to look at the proposal and harmonize it with spot blight.

- Chip Dicks pointed out the importance of limiting the authority to the restrictions on condemnation contained in Title 1. By subjecting this process to the condemnation provisions, the concern is that property rights advocates may argue that every time the bill is amended any progress is eroded. By subjecting spot blight to a more global provision, Va. Code § 1-219.1, nothing changes the language of § 1-219.1 which makes clear this is not eminent domain. However, the political reality is a bill that give a new legal right to take property will not get out of committee. Delegates Cosgrove and Dance agreed with Chip on this point.
- Chip Dicks suggested an approach that looks to the existing powers in Title 36 or § 1-219.1, otherwise receivership is vulnerable because it bypasses the protections that were built into eminent domain.
- Delegate Dance again expressed doubt that a receivership bill could pass the General Assembly. She suggested making amendments to existing legislation that would begin working toward the receivership process being incorporated. She suggested a place to start would be through cultivating relationships with developers who work with the city and building good faith with them. She suggested that Mark and Chip work with Jon on a proposal to bring before the work group at the next meeting.
- Delegate Cosgrove mentioned that in Chesapeake localities are extremely concerned about property being taken for public use. In Chesapeake two gas stations were going to be taken to build a CarMax, and Norfolk has had problems with the Coke plant. Subsequently that area of the state is particularly concerned with any ability to take property.
- Chip Dicks wondered if the locality is prevented from changing the zoning if the property is taken through receivership and sold at auction. He agreed that taking a house to use for a convenience store is a concern.
- Jon Baliles commented that a few years ago the city allowed for increases in fines on owners of vacant property. The fines are only approximately \$50–\$250, with the fines increasing the longer the property is vacant. That approach was not successful because it led to situations where a house could be vacant for ten years and the owner would only have to pay \$200 in fines, so there was no incentive to repair the property.
- Chip Dicks explained concerns with regard to increasing fines for vacant property. There are localities such as Danville, which has a growing vacant building population, but there is nothing the city can do to solve the problem because it has been devastated. There was reluctance on the part of the General Assembly to increase fines because many owners of vacant property are victims of the economy. A vacant building registry could become punitive. Often times, the owners are not at fault.
- Delegate Cosgrove commented that if the owner of a building pays taxes and keeps the property in reasonable repair it's his prerogative to keep the property vacant. He likened owning a vacant building to owning a classic car.
- Jon Baliles agreed that if the property is kept in reasonable repair and it is up to Code and secured, the owner can keep it vacant for as long as he would like. The concern is with those who do not stay within the bounds of the state Code.
- Delegate Cosgrove asked if there is a civil remedy.

- Jon Baliles mentioned spot blight and tax sales, but waiting two years before costs are recovered is too long a time period.
- Delegate Dance asked Jon, Mark, and Chip to prepare a proposal for the next meeting to move this issue forward.

III. Public Comment

- There was no public comment.

IV. Adjourn

- The meeting was adjourned at 11:29 AM.

COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair
SENATOR MAMIE LOCKE, Vice Chair
ELIZABETH A. PALEN, Executive Director



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VIRGINIA HOUSING COMMISSION

Meeting Summary

Mortgage Sub-Work Group 6th Floor Speaker's Conference Room, General Assembly Building July 19, 2011, 1:00 P.M.

Members present: Delegate Daniel Marshall, Senator John Watkins, Delegate Glenn Oder, Judson McKellar, Joe Face, Jay Spear, Pia Trigiani, Nick Kyrus, Susan Hancock, Bill Ernst, Mel Tull, Steven Deluca, Lindsay Lankford, Eddie Desch, Matt Bruning, Edward Miller, Duke De Haas, Steve Baugher, Alexander Macaulay, and Connie Chamberlin

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate Daniel Marshall, Chair**
 - The meeting was called to order at 1:04 p.m.
 - Delegate Marshall asked for an update on the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act.
- **Joe Face**; Commissioner of Financial Institutions, Virginia State Corporation Commission (SCC)
 - In the licensing and registration of mortgage loan originators, as of July 18, the SCC has received 9,247 mortgage lender applications. The SCC had been expecting a maximum of 7,000 applications. Of the applications received, the SCC has approved 6,339, denied 57, and 2,389 applications have been withdrawn or abandoned. There are still 462 applications pending; approximately half of those applicants have provisional licenses. Since July 1, the SCC has no longer been able to issue provisional licenses. As of July 18, the SCC has licensed and registered 5,989 mortgage loan originators in Virginia.
 - The Department of Housing and Urban Development (HUD) recently issued a ruling on the SAFE Act. The SCC was about to issue a proposed regulation to modify existing regulations and update the new law when HUD issued its ruling. As a result, the SCC decided to postpone issuing its proposed regulation until it has had an opportunity to thoroughly analyze the HUD ruling to ensure the proposed regulation will complement the HUD ruling.

DELEGATE DAVID L. BULOVA
DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III
DELEGATE G. GLENN ODER

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR MARY MARGARET WHIPPLE

MARK K. FLYNN
T.K. SOMONATH
MELANIE S. THOMPSON

- On July 21, the Department of Treasury will jettison the new Consumer Financial Protection Bureau (CFPB), and it will become its own entity. This will occur one year after the passage of the Dodd-Frank Act. CFPB will oversee the SAFE Act and will become the de facto regulator of the Nationwide Mortgage Licensing System & Registry (NMLS). CFPB presently has approximately 200–300 employees, and it is estimated the bureau will eventually have as many as 1,000 employees. The bureau’s initial focus will be on non-depository institutions. The bureau has intimated that it would like to partner with state regulators. The state regulators have identified over 200 rulings that CFPB will be required to issue as a result of the Dodd-Frank Act which will affect institutions that the SCC would normally regulate. It is anticipated that CFPB will become quite a large agency, and its impact is yet to be determined. The agency will report directly to the president, and the head of CFPB will be nominated by the president and confirmed by the Senate. Although the president has nominated Richard Cordray as director of CFPB, several senators have vowed to block any nomination unless the bureau’s powers are limited.
- **Chip Dicks**, with Virginia Association of Realtors (VAR), asked Mr. Face if there was any change in the federal regulations that would make private lenders subject to the SAFE Act or whether they were still exempt from the legislation.
 - **Joe Face** answered that he did not recall any change and believed private lenders are still exempt from the legislation, but the key will be in the future rulings from CFPB.
- **Connie Chamberlin**, with Housing Opportunities Made Equal (HOME), pointed out that although HUD just issued a ruling regarding the SAFE Act, it will no longer enforce the SAFE Act as that responsibility is being shifted to CFPB. She asked Mr. Face who is going to be in charge of SAFE once it is overseen by CFPB.
 - **Joe Face** responded that he is unaware whether anyone within CFPB has been appointed to oversee SAFE Act issues.
- **Connie Chamberlin** asked whether HUD will be out of the picture entirely with regard to the SAFE Act.
 - **Joe Face** replied that as of July 21, CFPB will take over full responsibility of administering and enforcing the SAFE Act.
- **Senator Watkins** asked Mr. Face what that will mean for him and the SCC. He pointed out that there could be conflicts between the SCC and CFPB with regard to regulating non-depository institutions. He asked Mr. Face if he planned to bifurcate his organization.
 - **Joe Face** answered that he is unsure at this point how the changes will affect him. There are great uncertainties facing state regulators nationwide, and they are unsure what their role will become. He assured Senator Watkins that they are doing what they can to ensure they still have input with regard to the regulation of all financial institutions.
- **Delegate Marshall** pointed out that one of the reasons for passing mortgage loan originator legislation in Virginia was to regulate financial institutions within the state rather than through the federal government.

- **Joe Face** responded that he does anticipate working with the federal government to some extent on the matter. CFPB has been reaching out to state regulators for help since it does not have its entire staff in place at this point. There are provisions in the Dodd-Frank Act that allow states to enforce the federal provisions from the Act. Between now and next session the SCC will be determining whether or not they will need to ask for state legislation to be amended to allow the state to directly enforce other provisions contained in the Dodd-Frank Act.
- **Delegate Marshall** pointed out that the Housing Commission will meet again in September, November, and December, and it may be difficult to fit that into the narrow time frame before session begins.
 - **Joe Face** clarified that determining whether or not he will recommend amending state legislation is something the SCC will be working on over the next few months. CFPB has indicated to the SCC that it would like the NMLS to be adapted to include the registration and licensing of payday and vehicle title lenders as well as other non-depository lenders.
- **Senator Watkins** asked Mr. Face if all states have passed mortgage loan originator (MLO) legislation?
 - **Joe Face** responded that all states have passed MLO legislation, and all are also now involved in the NMLS.
- **Senator Watkins** asked whether all states follow the model that Virginia used, in terms of criteria and guidelines for registering and licensing MLOs.
 - **Joe Face** answered that for the most part, most states followed the same model, although some states have unique aspects as in Virginia. Virginia has not yet received the official blessing from HUD that it is in compliance with the SAFE Act, and some states have but those are states that more closely mirrored the Act exactly with little to no difference from the model. Now, CFPB will be the agency to determine whether Virginia and the remaining states are in compliance.
- **Senator Watkins** asked whether Virginia has a registry for other non-depository institutions.
 - **Joe Face** answered that it does not have a registry for other non-depository institutions aside from internal processes where these institutions are accounted for. He asked Senator Watkins if he was referring to the national database.
- **Senator Watkins** said that he was referring to a database in Virginia that accounts for payday and title lenders and other non-depository institutions.
 - **Joe Face** asked if he meant a database for the purpose of licensing.
- **Senator Watkins** responded that although not initially, at some point those two will need to be incorporated.
 - **Joe Face** answered that the only databases in place are the NMLS and the payday loan database. Those are the only two databases that Virginia is associated with.
- **Senator Watkins** asked if one of the databases included title loans as well.

- **Joe Face** responded that title loans are not included at this point. All indications are that the NMLS could be the full repository for all non-depository institutions nationwide, in terms of licensing and registry.
- **Senator Watkins** expects that by the full Commission meeting in September there will be more concise information about CFPB and its potential impacts on the state level. He asked Mr. Face to put together a short report for the Commission meeting in September outlining CFPB's developments.
 - **Joe Face** told Senator Watkins he would put together a report on the matter ahead of the September meeting.

II. SB 795; Foreclosure Procedures (McEachin, 2011)

- **Senator McEachin** requested that SB 795 be moved to the Governor's Foreclosure Task Force.
- **Delegate Marshall** inquired whether the sub-work group would be amenable to accommodating Senator McEachin's request.
- The sub-work group agreed.

III. HB 2530; Foreclosure on Lien for Unpaid Assessments (Scott, J.M., 2011)

- **Delegate Scott** explained that this bill was before the Subcommittee on General Laws in the House during the most recent General Assembly session. A constituent, Clark Tyler, brought the problem and the impetus for the bill to Delegate Scott's attention. Delegate Scott introduced Clark Tyler to the sub-work group to give his presentation.
- **Clark Tyler**, the president of the Hallcrest Heights HOA in McLean, Virginia, began the presentation by explaining a problem the HOA experienced with unpaid assessments.
 - In 2008, one of the homeowners in Hallcrest Heights owed \$520,000 on a mortgage from subprime lender Countrywide Financial, who was taken over by Bank of America that same year. The homeowner stopped paying HOA dues and disappeared in 2008, and the HOA put a lien on the property in the amount of the unpaid assessments.
 - In 2010, the HOA received a notice from Bank of America stating that a foreclosure on the property was being initiated. The notice explained that at the foreclosure sale in January 2011, the HOA lien would be wiped out. When the foreclosure sale actually occurred in May 2011, the homeowner owed the HOA approximately \$4,000 in unpaid assessments.
 - Under Virginia law, Bank of America is only responsible for the HOA fees once it takes ownership of the property at the foreclosure sale. The total assessments from that point amounted to \$571.00, which Bank of America paid as full payment of the outstanding dues.
 - The property was eventually put on the market for \$580,000–\$600,000, and Mr. Tyler expressed his outrage that the bank would be profiting from the sale while refusing to pay all the assessments the HOA was owed. He also expressed his indignation at being unable to collect all the fees from Bank of America when it received \$97 billion in bailout money from the federal government.

- Mr. Tyler expressed his concern that there is a gap in the foreclosure process that results in detriment to the HOA. He suggested this practice could become an incentive to avoid paying HOA assessments if the problem is not corrected. HOAs provide important maintenance services to its homeowners and should be included as a more important component of the foreclosure process. He believes the bank “gamed the system,” and as a result, the county taxes and the mortgage were both paid, but not the HOA fees.
- **Delegate Marshall** asked Delegate Scott to describe the bill and what it was intended to accomplish.
 - **Delegate Scott** explained that the bill was intended to address the problems HOAs face during the foreclosure process with regard to recovering overdue assessments. He acknowledged that although the bill may not completely solve the issue, it is the first step toward fixing the problem.
- **Senator Watkins** asked Delegate Scott if the bill would give HOAs the first position with regard to lien priority.
 - **Delegate Scott** answered that yes, that is what the bill proposes.
- **Senator Watkins**—asked whether there are any covenants or restrictions within the deed that address provisions for liens.
 - **Clark Tyler** responded that there are provisions that address liens, and that the HOA had put a second lien on the property because the realtors intended to sell the property “as is.” The liens are in place until the foreclosure sale, at which point the liens are wiped out.
- **Senator Watkins** asked Mr. Tyler whether the deed that the homeowners sign when they purchase the property contains a provision for liens against the property for nonpayment of assessments.
 - **Clark Tyler** answered that the agreement does include a provision addressing liens on the property. In this case, the homeowner just vanished, and the HOA was unable to contact him.
- **Senator Watkins** asked Mr. Tyler to remind him whether Countrywide held the first deed of trust on the homeowner’s mortgage.
 - **Clark Tyler** responded that yes, Countrywide held the first deed of trust.
- **Alexander Macaulay**, with Citigroup, interjected that as a representative of the banking industry, he objected to the way in which Bank of America was being characterized by Mr. Tyler. References to the bailout are irrelevant, and the bank follows the laws as they exist today.
- **Delegate Marshall** invited anyone in favor of HB 2530 to address the work group.
- **Pia Trigiani**, of MercerTrigiani, introduced herself and explained that her firm represents the Community Associations Institute (CAI), which is a national organization of 30,000 members, approximately 4,000 of which make up three chapters in Virginia. Mercer Trigiani represents condominium and homeowner associations. The Virginia Legislative Action Committee (VLAC) is comprised of representative from the three Virginia Chapters of CAI, and represents the interests of community associations before the Virginia General Assembly.

- **Delegate Marshall** asked Ms. Trigiani whether one member corresponds to one condominium or homeowner association.
 - **Pia Trigiani** answered that that is indeed the case.
- **Pia Trigiani**, in response to Senator Watkins' earlier question regarding provisions for liens, explained that liens on lots and condominium units for unpaid assessments are established in statute under the Condominium Act and the Virginia Property Owners' Association Act, and are reflected in the applicable recorded covenants and restrictions.
- **Pia Trigiani** explained issues facing condominium and homeowner associations with regard to lender foreclosures.
 - A VLAC survey has indicated that members across Virginia are dealing with situations similar to the scenario Mr. Tyler just described, although the range of issues is rather broad and not directly related to this legislation. In particular, there are problems involving lenders who delay foreclosures, and lenders who lock out owners and take possession of the property without following through with foreclosure in order to take legal title, leaving the owners unaware of their continuing obligation to pay assessments.
 - The Condominium Act was enacted in Virginia in 1974, and is the statutory basis for liens on condominium units in Virginia. When the statute was enacted, the lien priority was established, which gives first priority to real estate tax liens, followed by first deeds of trust, and then assessment liens. The Property Owners' Association Act, which is the law that governs Hallcrest Heights, was enacted in 1989 and created a different lien priority. The Property Owners' Association Act gave first priority to real estate tax liens, followed by the first deed of trust, and then the lien that was filed at the courthouse first, whether it be for a second deed of trust or unpaid assessments. Delegate Scott's legislation proposes a lien priority where an assessment lien would take precedence over a first deed of trust.
 - Across the country, Virginia's law is often looked to as a model for other states. Virginia's Condominium Act was the basis for the Uniform Condominium Act. There is a limited priority lien in the uniform statutes, and the Commission on Uniform State Laws recommends a limited priority lien, which is typically a six-month priority.
 - HOAs provide municipal services to communities through preservation of common areas, which can include snow removal and road maintenance, and removes these burdens from the locality. The challenge is that the only money HOAs typically receive is through assessments, and the assessments fund these important municipal services. When a homeowner does not pay his assessments, the other homeowners have to contribute more to continue funding these services.
 - At a minimum, the lien priority under the Property Owners' Association Act should mirror the lien priority under the Condominium Act, because HOAs carry significant burden. The scheme is in part driven by secondary mortgage market lending guidelines. The documents are

drafted to comply with those secondary mortgage market lending guidelines, and that is partly why the structure is set up that way. The six-month priority is fairly standard and secondary mortgage market lending agencies are comfortable with that lien priority. However, going beyond six-months would be troublesome and problematic.

- **Elizabeth Palen** asked Ms. Trigiani how many states have the six-month priority lien.
 - **Pia Trigiani** responded that she was unsure of the exact number, but estimated that it was approximately slightly less than half of the states.
- **Delegate Oder** pointed out that it is nearly impossible to build a subdivision anymore without a HOA. There was a period of time when subdivisions were being developed where voluntary HOAs began forming to assist with small maintenance tasks, such as maintaining the entrance to the subdivision. However, recent requirements imposed on subdivisions necessitate the formation of HOAs. For instance, stormwater laws are such that a piece of property can no longer be developed without addressing the issue of stormwater runoff. Delegate Oder noted that he has seen subdivisions with as few as twelve houses require a HOA to fund a stormwater retention pond, its insurance costs, and its maintenance. The fact that other homeowners have to pay more in assessments to cover the non-paying resident is a problem that needs to be addressed.
- **Senator Watkins** pointed out that when dealing with foreclosures, the proceeds from the sale of the property are rarely enough to cover even half of the first deed of trust and the taxes, let alone six months of HOA assessments.
 - **Pia Trigiani** agreed that foreclosures are a problem in the current marketplace. Associations have statutory authority to enforce the lien for foreclosures, but they choose not to exercise this authority because they will be unable to pay off prior liens and still recover assessments. A Virginia Supreme Court case (available at <http://statecasefiles.justia.com/documents/virginia/-supremecourt/1021741.pdf?1306959574>) prescribes the way in which associations must pay off prior liens. In that instance, the lender takes the property, but associations lack the means to take the property because the associations' governing documents limit their authority to, for example, own property or expend the funds necessary to purchase the property. The problems are fairly significant; one community had 7,600 homes and averaged 30 foreclosures every month.
- **Delegate Marshall** invited anyone else in support of HB 2530 to address the work group. He then invited anyone in opposition to HB 2530 to address the work group.
- **Matt Bruning**, with the Virginia Bankers Association (VBA), expressed his sympathy for Mr. Tyler's situation, but explained that when assessment liens are moved up in lien preference, lenders assume additional risk when making the original loan. Just as homeowners assume the burden of additional fees when one homeowner does not pay his assessments, whenever a loan obligation goes unpaid, all the other borrowers assume the financial burden as well. He understands non-payment of assessments is a problem for associations, and offered to work with Ms. Trigiani and Delegate Scott to come to a solution. A six-month lien priority would

likely present similar issues for the banking industry, but he agreed to assess other states' positions on this issue.

- **Delegate Oder** expressed his appreciation that the VBA is willing to work on this issue, but stressed that a compromise must be reached. He has heard directly from homeowners who are members of associations how difficult it is for them to carry the weight of a non-paying resident, and he implored those present to work together to find a compromise on this issue.
- **Senator Watkins** asked if the bank is responsible for assessments once the property is transitioned into real estate owned (REO) property by the bank.
 - **Matt Bruning** replied that once the bank takes title of the property they are responsible for assessments from that point on.
 - **Pia Trigiani** explained that when a property is foreclosed on, the bank becomes the owner and is obligated to pay the assessments when the foreclosure sale concludes—even though a deed has not yet been recorded. The issue is that banks are delaying foreclosure, and in some cases even dispossess the owner of the property. One of her clients had a homeowner who was told to leave his property, and although he did so, the bank never foreclosed. The homeowner did not realize he still owned the home and was responsible for assessments until the sheriff came with a summons for him to appear in court for unpaid assessments. Another problematic situation occurred when the bank foreclosed on a property, and then rescinded the foreclosure, which left the owner responsible for the assessments again. She offered to work with the VBA on these issues. She mentioned that approximately fifteen years ago, they almost arrived at a compromise on this issue, but ultimately an agreement was never reached.
- **Connie Chamberlin** asked Ms. Trigiani if property taxes are paid during the period where banks are delaying foreclosure.
 - **Pia Trigiani** responded that the property taxes are typically paid, but the assessments are not. Another important point, particularly in condominium associations, is that the assessments go to pay insurance coverage, which covers fire and water damage, and that protects the lenders. This is particularly infuriating to associations, who are collecting assessments to protect someone else's property interest and are unable to recover those sums of money.
- **Delegate Oder** wondered if there is a way to deduct the dues from the property taxes since fewer services are required to maintain a vacant home.
- **Senator Watkins** agreed that when lending institutions take ownership of the property they must assume the responsibility of the assessments.
- **Delegate Marshall** invited anyone else in opposition to HB 2530 to address the work group.
- **Delegate Marshall** asked Delegate Scott whether he preferred the group act on HB 2530 as presented or if he would rather meet with those parties in support of and opposition to the bill to attempt to reach a compromise.

- **Delegate Scott** answered that he would like time to meet with Ms. Trigiani and Mr. Bruning to determine if the bill could be rewritten to suit everyone's needs.
- **Delegate Marshall** told Delegate Scott to decide whether he would like to present an update to the full Commission during the September meeting or the November meeting.

IV. Public Comment

- There was no public comment.

V. Adjourn

- The meeting was adjourned at 1:58 p.m.

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice Chair
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VIRGINIA HOUSING COMMISSION

Meeting Summary

Mortgage Sub-Work Group 6th Floor Speaker's Conference Room, General Assembly Building November 15, 2011, 10:00 A.M.

I. Welcome and Call to Order

- Delegate Daniel Marshall, *Chair*
- The meeting was called to order at 10:00 a.m.

II. Mortgage Loan Originator Proposed Changes

- **Delegate Marshall** asked Joe Face, Commissioner of Financial Institutions at the Bureau of Financial Institutions of the Virginia State Corporation Commission (SCC), to explain existing legislation governing mortgage loan originators (MLOs) in Virginia and any changes that may be necessary to ensure the state's compliance with the SAFE Act.
- **Joe Face** noted that § 1504(a) of the SAFE Act requires the licensing of individuals who "engage in the business of" a MLO. HUD issued a final ruling on the SAFE Act over the summer that differentiated between individuals who meet the definition of a MLO, given the activities a MLO may perform, and individuals who "engage in the business of" a MLO. When the SAFE Act was enacted, and states, including Virginia, were enacting their own versions of the SAFE Act, there was virtually little guidance at the federal level as to exactly who was required to be licensed. In short, HUD's recent ruling says that every individual who acts as a MLO is not necessarily subject to the SAFE Act's licensing and registration requirements.
- **Joe Face** explained that Virginia's law varies from the SAFE Act and the model in that the Virginia licensing requirement for MLOs, found in § 6.2-1701 of the Virginia Code, does not contain the "engage in the business of" language that § 1504(a) of the SAFE Act uses. Section 6.2-1701 uses the phrase "act as" and HUD makes a clear distinction in its recent ruling between "engag[ing] in the business of" and "act[ing] as" a MLO. The SCC believes that HUD's exemption for employees of governmental agencies and certain bona fide non-profits cannot be extended to those employees acting as MLOs in connection with a Virginia residential mortgage loan, even in a governmental or charitable context. The question has arisen as to how many other states carve out exemptions for governmental agencies and non-

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profit organizations. The SCC is not aware of any states that specifically exempt these entities; this is because the majority of states adopted legislation based on the Conference of State Bank Supervisors' model state law which mirrors the "engage in the business of" language of the SAFE Act. Thus, those states laws will be interpreted in the same manner that HUD has interpreted the SAFE Act.

- **Joe Face** explained that HUD's final SAFE Act rule clarifies the "engage in the business of" standard to mean loan origination activities performed in a commercial context with some degree of regularity or repetition. The SAFE Act does not apply to employees of governmental and housing finance agencies who act as MLOs in accordance with their duties as employees of those agencies. The SAFE Act does not apply to employees of bona fide non-profit organizations as defined by the HUD ruling. The remaining question is: what is a bona fide non-profit organization? States are required to adopt certain minimum standards that non-profits must meet before their employees can be declared exempt from MLO licensing.
- **Joe Face** suggested that this issue is a policy question that should be decided by the General Assembly. The proposed legislation would change the Virginia licensing requirement standard to "engage in the business of" to conform with the language of the SAFE Act. It would require the SCC to prescribe by regulation the procedures and criteria that it would use to determine whether an organization is a bona fide non-profit organization, and to give consideration to the criteria adopted by the Consumer Financial Protection Bureau (CFPB) or any other federal rulemaking authority under the SAFE Act when establishing this criteria. Finally, the bill allows the SCC to investigate the books, records, and activities of an organization to determine whether it meets the established criteria.
- **Maureen Stinger**, with the SCC, noted that the SCC submitted the initial draft of the bill to provide technical assistance, but as Commissioner Face suggested earlier, this is a policy question and the SCC is neither advancing nor rejecting this proposal.
 - The bill amends the definition of a MLO. The Act was originally drafted in 2009, and the existing definition excludes a number of individuals. Because of the nature of the new exemptions HUD has identified, the SCC decided to include these exemptions with all the other regulatory chapters in Title 6.2; those are being stricken at line 37 simply because they are being included elsewhere in the bill.
 - The date is stricken because it is no longer necessary. Subsection A has been added; this section currently has no subsections and is one paragraph. After "no individual shall," "act as" has been stricken and "engage in the business of" has been added. At line 74, "or hold himself out to the general public as a mortgage loan originator" has been stricken because that issue is already addressed in another section in Chapter 17.
 - The bill also adds subsection B, which lists exemptions. The exemptions are included in the definition of a MLO in the current act, they have simply been rewritten as specific exemptions in this bill for clarification purposes.

- Another paragraph of the bill addresses individuals who are not subject to the SAFE Act requirements because they do not engage in the business of a loan originator; Bill Shelton can expand on this issue.
- Another paragraph addresses what HUD has said about the exemption of employees of bona fide non-profit organizations from the requirement to be licensed as MLOs. HUD seemed to be concerned with situations where for-profit mortgage companies have formed non-profit organizations to issue mortgage loans and funnel borrowers to the for-profit entity, and avoid the SAFE Act licensure requirements. This new paragraph addresses this situation and the language is taken directly from the HUD ruling.
- The bill specifies requirements for the SCC in promulgating regulations regarding the criteria used to determine a bona fide non-profit organization. The criteria are established by HUD, which are not listed in this proposed legislation because enforcement of the SAFE Act has now fallen to the CFPB, and there may be changes to these criteria in the near future. The criteria that have been included in the bill illustrate the minimum standard.
- The bill requires the SCC to investigate and examine these organizations to ensure that they are and are continuing to be bona fide non-profit organizations.
- The bill also gives the SCC the authority to revoke the status of a bona fide non-profit organization.
- **Delegate Marshall** asked whether “bona fide” is defined by HUD.
 - **Maureen Stinger** answered that “bona fide” is not defined, but “bona fide non-profit organization” is partially defined. HUD says that for an organization to be considered a bona fide non-profit organization, it has to meet certain criteria. The criteria include (1) meeting the status of a tax-exempt organization under § 501(c)(3), which is an organization with a charitable purpose rather than any non-profit organization; (2) promoting affordable housing or provides homeownership education or similar services; (3) conducting activities in a manner that serves public or charitable purposes rather than commercial purposes; (4) receiving funding and revenue and charging fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of the clients; (5) compensating its employees in a manner that does not incentivize the organization or its employees to act other than in the best interests of the clients; (6) providing or identifying for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. This criteria was not specifically included in the proposed legislation in anticipation that they might change.
- **Bill Shelton**, the Executive Director at the Department of Housing and Community Development (DHCD), noted that this issue was discussed last year, but before HUD issued its final ruling the impact on Virginia remained uncertain.
 - The effect of the Virginia legislation was that any governmental entity, including housing authorities were made to ensure licensure of their MLOs. Since DHCD does not originate loans, it was relatively unaffected, however,

it does work with local government and non-profits that qualify as §501(c)(3) organizations. The Virginia Housing Development Authority (VHDA) contracts MLOs but also engages in the activity of a MLO. MLOs at VHDA became licensed in order to remain operational. DHCD provides a variety of assistance, including payment assistance. In order for payment assistance to be treated as a grant rather than a loan even though there are conditions that recipients must meet to avoid repayment, DHCD had to obtain an interpretation letter from the SCC, and did so in order to comply with the statute. Any other agency, including programs that provided similar payment assistance under very favorable terms to the borrower, also had to obtain a similar letter. Although some programs were able to, many either reverted back to providing grants rather than loans, or had to contract with a loan originator who was licensed, which was a complicated arrangement. The effect on agencies and non-profit organizations that were trying to find ways to continue to provide loan assistance was an inefficient system.

- The intention of the SAFE Act is to differentiate between loan originators who were providing loans under favorable terms for the borrower and those who were taking advantage of the borrower's situation. Another problem for agencies and non-profit organizations was that they were subject to the same licensure requirements as a full-time MLO even though they typically only originate about half a dozen loans per year. Many agencies and organizations therefore chose not to obtain licenses, resulting in an interruption of commerce in the affordable housing field. The Virginia statute swept up a broader audience than it perhaps originally intended.
- Although Virginia is not necessarily non-compliant with the SAFE Act if programs continue to operate this way, a more narrowly defined definition of who must be licensed would help to facilitate affordable housing in the commonwealth.
- **Randy Cook**, with the Virginia Association of Housing and Community Development (VAHCD), agreed that the existing language of the statute created obstacles and additional costs in licensing loan originators to comply with the Act. VAHCD would be covered by paragraph 10 of the proposed legislation, and being exempted from licensure would contribute to a more efficient process.
- **Alexander Macaulay**, representing Citigroup, asked Ms. Stinger if the "act as" standard is narrower than the "engage in the business of" standard.
 - **Maureen Stinger** responded that what is being narrowed is the pool of individuals who are required to be licensed. Government employees or employees of bona fide non-profit organizations will no longer be required to be licensed as MLOs.
- **Alexander Macaulay** pointed out that the statute licenses MLOs, who are the actual people who interact with borrowers, but the license requirement speaks more to the activities performed by the MLO; he suggested that this could result in unintended consequences.
 - **Maureen Stinger** replied that the bill defines a MLO as a person, but a person who does one of two things: he either takes an application for a

residential mortgage loan, or offers or negotiates the terms of a residential mortgage loan. Whether or not a person qualifies as a MLO is determined by the activity in which he is involved. The federal act actually uses “takes an application *and* offers or negotiates,” which makes the Virginia standard stricter than the federal standard.

- **Alexander Macaulay** asked Ms. Stinger to further explain what direction HUD has given for the “in the business of” piece of the requirement.
 - **Maureen Stinger** answered that HUD thoroughly identifies what “engage in the business of” means; it then defines it, and sets forth in an appendix who does not engage in the business of a MLO. The SCC is obligated to interpret laws in conjunction with federal law where Virginia law is silent or doesn’t specify as much as the federal law, and this is why the non-profit organizations and government agencies are experiencing difficulty.
- **Alexander Macaulay** pointed out that “engage in the business of” is not a defined term in the statute.
 - **Maureen Stinger** responded that the SCC has identified a number of terms that HUD has defined that the SCC plans to propose for adoption during the regulatory process, including “taking an application,” and “residential mortgage loan.” If the General Assembly chooses to adopt the “engage in the business of” standard that would be another defined term. The SCC has no objection if the legislature would prefer those terms to be defined in the statute, but the SCC does intend to adopt all of those terms. The SCC has the authority to promulgate regulations elsewhere in Chapter 17.
- **Senator Watkins** asked Joe Face if an application or filing fee would be required for agencies and non-profit organizations to file for exemption under the statute.
 - **Joe Face** answered that he was unsure at this point whether any fee will be required. If the SCC does not have to charge anything it certainly will not. There will not be a large volume of exemption filing since there are relatively few agencies and organizations that will be exempt from licensing.
 - **Maureen Stinger** pointed out that national non-profit organizations, such as Habitat for Humanity, will want bona fide non-profit organization status in all of the states in which they operate. In Virginia, there will probably be a substantial number of these organizations and the process will probably be fairly streamlined since the HUD requirements will be the same.
 - **Joe Face** added that he does not anticipate that it will be difficult for the SCC to determine whether an organization is bona fide, and if there is an issue the SCC has the authority to make the final determination through an on-site visit.
- **Senator Watkins** asked if the CFPB had taken over the enforcement of the SAFE Act from HUD yet.
 - **Joe Face** responded that it took over SAFE Act enforcement as of July 21, 2011. As a point of information, he mentioned that he has received the letter from the CFPB informing state banking agencies that it will not be making a definitive ruling on whether Virginia or any other state meets the requirements under the SAFE Act until after December 31, 2012.

- **Chip Dicks**, on behalf of Virginia Association of Realtors (VAR), mentioned that in the Mortgage Lender Act, there is a definition of mortgage loan that exempts self financing. Owner-financed mortgage loans are not mortgage loans per se, and VAR proposed a change to eliminate seller financing language from the definition of mortgage loan, and insert it in the exemptions section. This would allow owner-financed loans to remain exempt. This would help to clarify that owner-financing is exempt for real estate companies, and would not change the substantive provisions of the bill
- **Delegate Marshall** suggested that Mr. Dicks clarify the exemption for owner financing as a separate bill.
 - **Chip Dicks** agreed that such a provision is more appropriate in Chapter 16 rather than Chapter 17.

III. Public Comment

- There was no public comment.

IV. Adjourn

- The meeting was adjourned at 11:00 a.m.

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Meeting Summary

Time-Share Sub-Work Group **4th Floor West Conference Room, General Assembly Building** **August 15, 2011, 10:00 A.M.**

Members present: Delegate John Cosgrove, Frank Eck, Phil Richardson, Pam Coerse, Michael Levinson, Trisha Henshaw, Bill Ernst, Rob Hagerty, Lori Overholt, Joe Mayes, and Heather Gillespie

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- Delegate John Cosgrove, *Chair*
- The meeting was called to order at 10:00 a.m.
- **Delegate Cosgrove** welcomed everyone to the meeting, and noted that the group will discuss individually each Virginia Code section affected by the Time-Share Act. He clarified that the intent of this Act is not to interfere with contractual rights that have been willingly entered into, but to clarify the existing law and to offer more consumer protection going forward, not retroactively.

II. Discussion of Changes to the Time-share Act

- **Frank Eck**, of Eck, Collins and Richardson, explained that this legislative proposal is recommended by the Virginia Resort Development Association's (VRDA) legislative committee. There are three issues that have arisen when reviewing the bill draft. First, a proposal was made to allow developers to exceed 52 sales per unit. Also, although Virginia case law now renders the Consumer Protection Act inapplicable to this Code section, removing it from § 55-374.1 would provide clarity. Finally, fiscal considerations prompted striking § 55-400 from this bill proposal.
- **Phil Richardson**, of Eck, Collins and Richardson, detailed the proposed new language in § 55-361.1. This new subsection D exempts from registration a time-share project located outside of Virginia, for purchase by a Virginia resident, if that resident is an existing owner with the time-share company.
 - **Heather Gillespie**, the Ombudsperson at the Department of Professional Occupation Regulation (DPOR), asked how this provision would affect

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- Virginia’s jurisdiction over an out-of-state time-share no registered with the state.
- **Joe Mayes**, with Williams Mullen, explained that this amendment establishes the baseline proposition that companies must comply with registration provisions of the state where the time-share is located. If there is a dispute, then the Common Interest Communities Board has jurisdiction over the dispute.
 - **There were no issues with regard to this section.**
 - **Phil Richardson** explained that there are various amendments to definitions found in § 55-362. Many of these additional definitions are related to additions to the resale section.
 - **Frank Eck** suggested including “contract” and “all buyer’s acknowledgment” in the definition of “consumer documents,” since under this Act those would not be considered consumer documents. It is important to include “all” when reference acknowledgments as there can be as many as three acknowledgements in one transaction.
 - **The group agreed to include “contract” and “all buyer’s acknowledgment” in the definition of “consumer documents.”**
 - **Phil Richardson** explained that the addition of subsection D to § 55-363 is meant to address a situation where a time-share owner attempts to transfer his interest back to the developer or association without the consent of the developer or association. The new language in this section requires an authorized representative of the developer or association to sign the deed conveying the property back to them.
 - **Frank Eck** mentioned that this is a significant change from the common law. Traditionally, only the grantor is required to sign the deed and the title transfers upon delivery. This section requires both the grantor and grantee to sign the deed, and title will not change until recordation. This eliminates the potential for abuse, and prevents people from conveying their time-shares back to the developer or association without the consent or knowledge of the developer or association.
 - **There were no issues with regard to this section.**
 - **Phil Richardson** noted that the only modification to §55-366 was the addition of “time-share project.”
 - **There were no issues with regard to this section.**
 - **Frank Eck** explained the amendments to §§ 55-367 and 55-368. The reason for these amendments is to consolidate the requirements for creating a time-share program or project into two sections of the Act.
 - **Michael Levinson** inquired about the replacement of “program” with “method” at line 381.
 - **Frank Eck** explained that “method” meant the contract signed by the managing agent and the developer or association, with attached exhibits.
 - **There was a consensus among the group to replace “method” with “contractual terms by which” at line 381 of the bill draft.**
 - **Michael Levinson** directed the group’s attention to line 435 of the bill draft. This is existing language in the Virginia Code today, but he expressed his concern that contracts for goods and services is voidable

- by the association after the developer control period ends. A better way to handle this is to allow the board of directors to terminate the contract after the developer control period ends, and not to do so retroactively.
- **The group discussed the merits of Mr. Levinson’s argument, and a consensus was reached to change “association” to “board of directors” to maintain consistency within the Act, and to change “voidable” to “terminable” at line 435 of the bill draft. The group also decided to add a 60-day notice requirement.**
 - **Phil Richardson** explained that changes made to **§55-369** were to clarify the existing process of transferring title to common elements (furniture, fixtures, and equipment) to the association at the end of the developer control period.
 - **Michael Levinson** suggested adding language to clarify the ownership of the furniture, fixtures, and equipment in each time-share unit.
 - **Discussion ensued, and the group decided to change “therein” in line 510 to “within the project,” since that word, by its definition, encompasses both the individual units and the common elements.**
 - **Phil Richardson** explained that **§§ 55-370, 55-370.01, and 55-370.1** all clarify procedural issues related to the association, including calling meetings, maintaining books and records, use of email, and providing annual reports to time-share estate program owners.
 - **Delegate Cosgrove** expressed concern over boards of directors of associations using only email to contact time-share owners without affirmative consent by the owners. He asked the group to address this concern, and draft language allowing time-share owners to specify the method of communication by which they will be contacted.
 - **Phil Richardson** described the addition of **§ 55-370.1.1**, which applies to time-share use projects. This section requires that the association provide annual reports and audited financial statements to time-share use owners on an annual basis. Associations in time-share estate programs have always been required to send its owners financial information annually, this section imposes the same requirement on associations in time-share use projects.
 - **There were no issues with regard to this section.**
 - **Phil Richardson** explained that **§ 55-371** clarifies what information must be contained in the time-share instrument for a time-share use project.
 - **There were no issues with regard to this section.**
 - **Phil Richardson** described changes to **§ 55-374**, which provides for a reorganization of the public offering statement to allow the information provided to read more logically.
 - **Trisha Henshaw**, the executive director of the Common Interest Community Board (CICB), called attention to line 1081, which allows time-share estate programs to issue the annual report as an exhibit to the public offering statement. She suggested a reference to time-share use projects and the Code section governing annual report requirements may be appropriate.

- **The group agreed to include “or time-share use program” following “time-share estate program,” and “or 55-370.1.1” following “§§ 55-370.1,” both on line 1081 of the bill draft.**
- **Phil Richardson** explained that § 55-374.1 resolves inconsistencies between this chapter and the Virginia Nonstock Corporation Act in favor of this chapter.
 - **There were no issues with regard to this section.**
- **Phil Richardson** described the changes made to § 55-374.2, which specify requirements for exchange company disclosure documents.
 - **There was a question as to why subsection B of this section was stricken. Delegate Cosgrove asked Frank Eck to discuss the matter with his colleagues and report back to the sub-work group.**
- **Phil Richardson** explained that minor changes to § 55-375 clarify the escrow deposit requirements in connection with time-share and alternative purchases.
 - **There were no issues with regard to this section.**
- **Phil Richardson** described revisions to § 55-376, which specify that the purchaser’s notice of cancellation must be in writing.
 - **There were no issues with regard to this section.**
- **Phil Richardson** detailed the changes to § 55-376.1, which clarify procedures related to possibility of reverter and the reverter deed for a time-share estate.
 - **Delegate Cosgrove directed the group’s attention to line 1410 of the bill draft, which addresses attorney fees in connection with the possibility of reverter. After failing to obtain a satisfactory answer as to why this provision was stricken, he decided that it was to remain in this Code section.**
- **Phil Richardson** explained the addition of § 55-377, which requires the buyer’s acknowledgement and stipulates that it must be a separate written document.
 - **Delegate Cosgrove** noted that requiring the buyer’s acknowledgement to be a stand alone document heightens disclosure standards and provides more protection for both the consumer and the developer.
- **Phil Richardson** described the new language in § 55-380, which requires a copy of the buyer’s acknowledgement to be included in the certificate of resale in the event of any resale of a time-share by an owner other than the developer.
 - **Trisha Henshaw** noted that the Code section governing annual reports of time-share use projects, § 55-370.1.1, should be included in line 1467 of the bill draft.
 - **There was a consensus among the group to include § 55-370.1.1 in line 1467 of the bill draft.**
- **Phil Richardson** mentioned that the bill draft adds §§ 55-380.1, 55-380.2, 55-380.3, and 55-380.4, which regulate resale of a time-share by a reseller, and detail exemptions from reseller requirements, recordkeeping requirements, and prohibited practices.
 - **Delegate Cosgrove asked staff to include a provision in the bill draft that requires resellers to register with the CICB.**
- **Phil Richardson** noted that amendments to § 55-382 require a determination of compliance for certain violations by the CICB instead of the Real Estate Board.

- **Heather Gillespie** expressed concern about subsection B, which requires an aggrieved owner to first seek a determination of compliance from the CICB for violations under §§ **55-375 and 55-386** before going to court.
- **Trisha Henshaw** agreed that although this is existing language, it is troubling because the CICB cannot make a determination of noncompliance with these sections. A determination of noncompliance would mean the CICB is holding a disciplinary hearing without providing notice or observing other requirements for a formal hearing.
- **Delegate Cosgrove asked Phil Richardson to discuss the matter with his colleagues and report back to the sub-work group.**
- **Phil Richardson** explained § **55-383** revisions, which specifies the ground on which a court may grant rescission of a contract.
 - **There were no issues with regard to this section.**
- **Phil Richardson** described changes to § **55-385**, which clarify the record-keeping requirements of financial reports, and strikes superfluous language.
 - **There were no issues with regard to this section.**
- **Phil Richardson** detailed the revisions to § **55-386**, which specify requirements for a performance bond in the event the developer's units are incomplete.
 - **There were no issues with regard to this section.**
- **Phil Richardson** mentioned the amendments to § **55-390**, which provides that a time-share project or alternative purchase may not be disposed of unless the project or purchase has been properly registered with the CICB.
 - **There were no issues with regard to this section.**
- **Phil Richardson** explained that § **55-394.1** revisions specify the procedure by which a time-share project or program registration may be terminated with the CICB.
 - **Trisha Henshaw** mentioned that the CICB supported a legislative proposal that affects the termination provisions of this section. The proposal is essentially identical with the addition of a process by which a registration can be terminated administratively for failure to file an annual report for three years or more, or for failure to renew the State Corporation Commission (SCC) registration for five years or more. This has also been done with condominium registration. She suggested including mirroring language in this bill draft.
 - **There were no other issues with regard to this section.**
- **Phil Richardson** described revisions to § **55-396**, which specify the powers and duties of the CICB, particularly with regard to issuing a cease and desist order determined by legal notice with an opportunity for hearing that the developer has violated one of the specified unlawful practices set forth in this Act.
 - **Discussion ensued, and Delegate Cosgrove directed the group to continue discussing this section, as well as § 55-396.1 and all the issues identified above, outside of this meeting and to report back to the Common Interest Communities Work Group at the next scheduled meeting.**

- **The question as to whether to include the Virginia Consumer Protection Act in § 55-374.1 as an exempted statute was discussed throughout the meeting, and the issue remained unresolved.**

III. Public Comment

- There was no public comment.

IV. Adjourn

- The meeting was adjourned at 12:17 p.m.



VIRGINIA HOUSING COMMISSION

MEETING SUMMARY

Virginia Housing Commission Municipal Water Issue Sub-Work Group 5th Floor West Conference Room, General Assembly Building May 2, 2011 10:00 A.M.

Members Present: Brian Gordon, Tyler Craddock, Steven Edgemon, Tad Jones, Phil Boykin, Bill Ernst, Martin Johnson, Chip Dicks, Ted McCormack, Preston Bryant, Tom Frederick, Mark Flynn, John Lan, Roger Wiley, Mike Toalson

Staff Present: Elizabeth Palen and Jillian Malizio

I. Welcome and Call to Order

- Delegate Glenn Oder; *Chair*
 - The meeting was called to order at 10:06 AM.
 - Introductions

II. HB 2455; Municipal Utility Services (Comstock, 2011)

- **Delegate Marshall**—Asked whether the discussion should begin by focusing on this specific bill or the broader issue behind the bill.
- **Chip Dicks**; Virginia Association of Realtors (VAR)—The broader issue is that Water and Sewer Authorities have the power to put a lien on property owners' property for the failure of the tenant to pay the water bill. In essence, Water and Sewer Authorities are making the landowner pay the previous tenant's bill, and they are putting liens on properties with no notice. There was some legislation a few years ago that required Water and Sewer Authorities to give notice thirty days in advance to the tenant. There is another Code section that speaks directly to Water and Sewer Authorities, and they believe this Code section controls this provision and does not require them to get a judgment before putting a lien on the property. This year there were many pieces of legislation, and some proposed to abolish lien authority altogether. This would negatively affect the city's municipal bond rating, because one of the criteria rating agencies use is the ability of Water and Sewer authorities to put a lien on the property. Lien authority cannot be entirely abolished. The General Assembly's approach this year would require some level of

due diligence from Water and Sewer Authorities with a provision that requires notice before putting a lien on property. The difference between the two Code sections is that one applies to Water and Sewer Authorities only and the other applies to local government. It costs almost as much to go to court for fees as it does to pay three months worth of back fees. A typical bill is \$35/month, with \$50/month in the high range, and \$150 as the maximum; it would cost much more to go to court. There was also some discussion about looking at a tax check-off program or requiring a deposit. It was also suggested that the service be required to be in the landlord's name, but landlords object to doing this because they are not incurring the bills.

- **Delegate Marshall**—In my district I have heard that the problem lies in Henry County, and may not be a consistent issue across the Commonwealth, maybe we should not try to fix something that is not broken across the entire Commonwealth.
- **Chip Dicks**—Delegate Dance has this problem in Dinwiddie County. Liens are routinely put on landlords' property within the first thirty days of the tenant's delinquency. This creates two problems: 1) once the creditor has been paid the landlord has to have the lien removed, and this creates filing fees; 2) in the meantime, the landlords have a mortgage with a judgment on the property, which puts them in violation of their loan agreements.
- **Delegate Oder**—Interesting, seems like there is a marketplace for someone to go to an apartment owner and say we'll bond you for this much a month. We'll make sure if anyone doesn't pay the bill, we'll pay it and then go after them,
- **Chip Dicks**—Apartment communities with 300 units use sub-metering. The properties are retrofitted so that every one of the units has a separate meter and the tenants pay directly. The real problem is with single family properties that are not able to be sold and are being rented.
- **Delegate Marshall**—So the problem is with single family properties?
- **Chip Dicks**—Yes, I think that seems to be the consensus—and the problem has been exacerbated by the current housing market.
- **Delegate Marshall**—Asked whether water is the only utility for which a lien can be put on the properties or if it can also be done with gas, electricity, cable, and trash.
- **Chip Dicks**—Liens can only be put on properties for water and sewer delinquencies.
- **Mark Flynn**; Virginia Municipal League (VML)/Housing Commission Citizen Member—For other utilities, if tenants don't pay their bills in location one, they will not be able to get service in their next location. Water and Sewer Authorities don't have that type of control.
- **Preston Byrant**, McGuire Woods Consulting—Agreed that Mr. Dicks' explanation is fair and accurate. Also pointed out that there are two conflicting Code sections that need to be aligned.
- **Delegate Oder**—Asked if it is possible for those two Code sections to come together.
- **Preston Bryant**—Responded that he thought it was possible.
- **Chip Dicks**—Agreed with Mr. Bryant, but pointed out that during the time crunch of the session there is not much time for stakeholders to sit down and flesh out the

Code sections to make them align. Some people argue that there should not be a lien authority, but there are those who say the water and sewer authority needs some way to obtain payment. Although they are two extremes, Chip believes there is room in the middle for the two to come together. Explained that he is looking at non-water and sewer entities to explore how those authorities conduct their businesses.

- **Preston Bryant**—The two Code sections are §§ 15.2-5139 and 21-184.
- **Delegate Oder**—Advised the work group that they will work on this issue throughout the summer, receive comments, and meet again in August. Asked whether further action needed to be taken on the Comstock bill.
- **Steve Edgemon, Fairfax Water**—Fairfax County has looked at the Falls Church rates within this context.
- **Delegate Marshall**—Asked if there is a lawsuit pending.
- **Steve Edgemon**—There are some lawsuits by homeowner’s associations that are currently in the court system. The issue is that the Falls Church Water Authorities were charging a rate of return in addition to transfers and costs. The courts decided that this was a tax on the people in Fairfax County, and held the authorities could not charge people in this way.
- **Ted McCormack; Virginia Association of Counties (VACO)**—There may have been some remedies suggested by the court, but the issue there was that the Falls Church Water Authority didn’t notify the customers that a remedy was available.
- **Delegate Oder**—Delegate Comstock needs to know H.B. 2455 (2010) was discussed and the conclusion of the committee was that no further action be taken on the bill, and that if she has any further issues to please let the Commission know of those issues.

III. Public Comment

- There was no public comment

IV. Adjourn

- The meeting was adjourned at 10:40.