COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Affordable Housing, Real Estate Law, and Mortgages Work Group/Neighborhood Transitions Joint Meeting
Monday, December 5, 2016, 1:00 PM
House Room D, General Assembly Building

I. Call to Order - Affordable Housing, Real Estate Law, and Mortgages Work Group

Delegate Christopher Peace, *Chair,* called the meeting to order at 1:00 PM.

Work Group members in attendance: Delegate Christopher Peace, *Chair*; Delegate Betsy Carr; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Laura Lafayette, *Governor Appointee*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; Paul Brennan, *Virginia Housing Development Authority*; J.G. Carter, *SunTrust*; Tyler Craddock, Chip Dicks, *Virginia Association of Realtors*; Brian Gordon, *Northern Virginia Apartment Builders Association*; Kelly Harris-Braxton, *Virginia First Cities*; Kelly King Horne, *Homeward*; Ralston King, *Whitehead Consulting*; Joe Lerch, *Virginia Association of Counties*; Katherine Payne, *Williams Mullen*; Renee Pulliam, *Virginia Apartment Management Association*; Elizabeth Steele, *Stewart Title*; Chris Thompson, *Department of Housing and Community Development*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Companion Animals and Rental Property

- **Chip Dicks**, *Virginia Association of Realtors*: Over the years, there has been a growing trend for Internet-based, third party verifiers for assistance animals. The result is an abuse of the request for a reasonable accommodation process. This proposed legislation accurately reflects the current status of federal law, state and federal regulations, and guidance that the Virginia Real Estate Board has adopted. DPOR and the Attorney General's office have no official opinion of this bill.
    - Definitions for an "assistance animal," "handicap," "housing provider," "major life activities," and "physical or mental impairment" have been pulled from existing law and included in this bill. Stakeholders recommend lines 45–46 be taken out regarding transvestites. For simplicity, lines 46–47 allow the works "handicap" and "disability" to be used interchangeably.
    - The new section 36-96.3.1 has been added. This includes the provisions brought forth by the housing providers, and has been trued up with existing

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SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR GEORGE L. BARKER
MARK K. FLYNN
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state and federal law. It's clear under federal and state law that any animal needs to be under control and follow reasonable rules and regulations. Language on lines 159–160 shows that policies apply equally, with the exception of financial obligations, for someone that is awarded a reasonable accommodation.

  - Paragraph C deals with provisions that all animals need to comply with rules regarding leashes and other forms of control.
  - Paragraph D incorporates the definition of a "therapeutic relationship," which has been taken from guidance from the Real Estate Board, and asks for a third-party verification for need of reasonable accommodation. This has been trued up with advice from the stakeholders.
  - The language in paragraph E addresses the situation where if the need for reasonable accommodation were not apparent, then there would be the option of an interactive process between the housing provider and the individual requesting accommodation. Line 188 describes that if the owner is not able to grant the accommodation, then an alternative will be discussed. Limitation on a reasonable accommodation from federal guidance is included, and is not to cause "an undue financial and administrative burden" on the housing provider.
  - The basis for denial of a reasonable accommodation is outlined in section F.
  - I suggest that those with concerns for substantial equivalency with HUD that there is a process in place. This would be submitted for determination of substantial equivalency to HUD, and edits can be discussed in 2018. It is my hope this will be favorably considered.
  - I request one technical edit on line 156, to read "a tenant who is, or who has an individual…"

- **Senator George Barker:** Can you give us some examples of what situation would constitute a denial for accommodation with one animal, but may allow an alternative animal?
  - **Dicks:** A thirty-foot boa constrictor is not a reasonable accommodation. There are issues of modification of the physical premises, and modification of practices, policies, and procedures. It's a difficult situation when there is a mental disability, as the housing provider must trust the word of a third party verifier. There are already penalties in existing law for those providing illegitimate letters of verification, so they were not included in the bill.
- **Senator Barker:** Can you add any more examples of animals that would be denied?
  - **Dicks:** We would say no to a pig, cow, or farm or exotic animals. Assistance animals are meant to provide emotional support, and alligators or snakes do not generally provide that.
- **Renee Pulliam**, *Virginia Apartment Management Association*: In some parts of the state, it is not totally out of the ordinary to have animals like the ones that Mr. Dicks listed.

- **Michael Toalson**, *Home Builders Association of Virginia*: If these pets result in cost for the housing provider, is the cost then not passed down to all other tenants?
    - **Dicks:** Correct, the costs would be socialized over the tenant base. This is the current policy position, and we simply want to ensure that those without disabilities are not taking advantage of the system.
- **Mark Flynn**, *Governor Appointee/Virginia Municipal League*: Perhaps we should clarify in the definition that an assistance animal is "not a pet" only in reference to the bill and not in the general sense.
    - **Dicks:** I would be happy to accommodate that edit, but that is not the way the federal law reads. The desire of the stakeholder group was to use the exact wording from the existing law and regulations.
- **Robert N. Bradshaw**, *Independent Insurance Agents of Virginia*: Who is the authority that denies or approves the reasonable accommodation?
    - **Dicks:** Each housing provider has a series of policies and procedures regarding reasonable accommodation, and the housing provider makes the decision for approval or denial based upon them. If the housing provider is stricter than they should be, then they are subject to a fair housing complaint.
- **Delegate Peace:** There is no requirement that the assistance animal be licensed or registered in that locality, correct?
    - **Dicks:** Yes, that does not apply to fair housing law.
- **Delegate Peace:** This would apply to the whole breadth of housing providers, from single-family homes to multifamily dwellings, correct?
    - **Dicks:** Correct, unless they are under the single-family exemption for an individual under the Fair Housing Law.
- **Delegate Peace:** How would this apply in situations where there are covenants or zoning?
    - **Dicks:** In that circumstance, the housing provider would be the association, as our definition of housing provider includes those that administer rules, practices, policies, or services.
- **Delegate Peace:** Would you be opposed to making the language very clear that this would include restrictive covenants?
    - **Dicks:** Not at all.
- **Delegate Peace:** Would you envision the rights and responsibilities of someone with a disability as the title for this bill?
    - **Dicks:** Yes.
- **Delegate Peace:** Is there a reason that the interactive process cannot be applied universally? Would we not want to ask for third party verification, even if the disability is readily apparent?
    - **Dicks:** No, I do not believe so, and that is not the policy.

- **Delegate Peace:** Regarding the edit made to include a tenant who has an individual with a disability, must this disabled individual also technically be a tenant?
    - **Dicks:** No, a disabled person in the housing world includes the tenant, an authorized occupant, or an individual associated with a disabled person.

- **Helen Hardiman**, *Director of Fair Housing, HOME*: While I appreciate being included in this process and everyone's hard work, unfortunately I come in opposition to this bill. I had understood that the problem pertained specifically to verifying a disability in the context of an emotional support animal. The Real Estate Board recently gave guidance regarding trustworthy third-party verifiers for emotional support animals. I believe this gave clarity to the problem housing providers faced and the guidance they needed.
    - The proposed legislation gives no clarity regarding verifying a disability in the context of an emotional support animal. It is too broad. If this is already law, I do not see the need for a new bill. I worry that this may damage the rights of those with disabilities. I urge this work group to give the Real Estate Board guidance a read, and consider if this legislation is really necessary.
- **Toalson:** What specifically are you concerned about that is too broad?
    - **Hardiman:** The definition of "housing provider" is too broad, and will apply to all prohibitions and all protective classes. Disabilities are not made equal, and there is no way to standardize every reasonable accommodation. There is lots of case-specific analysis. This bill runs the risk of denying accommodation to those with legitimate disabilities, as we cannot predict what may be requested.
- **Brian Gordon**, *Northern Virginia Apartment Builders Association*: We did start at the issue of fraudulent verifiers. The problem is that while these letters are legally worthless, they look very official. It is difficult for a rental agent to determine their legitimacy. I believe this bill is helpful, as it provides a step-by-step process for housing providers.
- **Tyler Craddock**, *Manufactured & Modular Housing Association*: I understood that this legislation was simply codifying existing law. Is it this existing law that is curtailing the rights of disabled individuals?
    - **Hardiman:** If this is already the law, why do we need a bill? The HUD statement on reasonable accommodation already describes most of what is in this bill. I think you are opening up new interpretations of the bill, and risk harm to those with disabilities.
- **Pulliam:** For housing providers, to time getting through legal hoops creates a logistical challenge in dealing with our residents. We need educated decisions based on existing law, and guidance so landlords are not delaying individuals from obtaining housing because we are seeking further clarification. Our organization is in favor of how this is written, so that we can open up that dialogue initially and meet their needs.
- **Hardiman:** For every person who fraudulently claims a disability, there are a million people with legitimate mental and physical disabilities. We are discussing their ability

to use and enjoy their private home. Don't think about the bad apples, but those with genuine disabilities.

- **Toalson:** Some people are taking advantage to vacate fees other people have to pay regarding their pets.
- **Peace:** Yes, there is abuse of request for reasonable accommodation.

- **John Cimino**, *Director of Public Policy, Virginia Board for People with Disabilities*: The intent of this legislation was initially to deal with the online service animal letter mill. Another intent was to put the law, as it exists, in one place. We feel that there are ways to do both of those things without legislation. We do not think this addresses the issue of fraudulent online letters, which is something we would like addressed.
    - To the extent that this is a summary of existing law, we feel this could be better accomplished through legislative guidance. We fear that in restating something, it may be misinterpreted. However, this is a dramatic improvement to the bill during the revision process.
- **Delegate Peace:** Does requiring there be a therapeutic relationship with the animal not alleviate the issues with fraudulent letters?
    - **Cimino:** It is my understanding that this is not a new part of the law, just a summary of what housing providers can already do. This does not get to the crux of the issue.
- **Dicks:** I believe we all want the same thing, which is for those with disabilities to go through the reasonable accommodation process without difficulty. Guidance from the Real Estate Board has no binding effect on anyone. I suggest that this is a correct statement of the law. The housing providers feel strongly that having this in the code would be of benefit. The substantial equivalency determination with HUD would also ensure that we are trued up to the law.
- **The motion passed to recommend the legislation to the Full Commission.**

III. Recycling for Multifamily Buildings throughout the Commonwealth (SJ 87, Ebbin, 2016)

- **Michelle Gowdy**, *Virginia Municipal League*: Of the nine localities that responded positively, we have summarized their responses in our report (which can be found under " materials").
- **Joseph Lerch**, *Virginia Association of Counties*: We did not find any localities outside of Northern Virginia that have ordinances that require recycling collecting in multifamily residences.
- **Elizabeth Palen**, *Executive Director of VHC*: Senator Ebbin asked us to study this issue of whether multifamily residences should require recycling. We felt that more information was required, so we asked for this information previously.
- **Toalson:** Do you know many localities in Virginia that have recycling programs? Are they all across the state or is it sparse?

- **Lerch:** It is my understanding that in the state code, each region is to meet certain recycling targets. How they get there is up to the locality.

IV. Recordation of Deeds/Liens (HB 636, Marshall, D., 2016)

- **Whittington Clement**, *Hunton & Williams*: This legislation gives localities the right to pass an ordinance that would allow them to collect delinquent real estate taxes when an instrument was placed on record. We have created a pilot program for the City of Danville.
    - In this program, no deed conveying an interest in real property located in the city shall be recorded by the clerk unless the city director of finance or his designee gives his approval, with regard to liens or other fines for unpaid taxes.
    - A transaction would be exempt from this if an attorney prepared a deed with their Virginia State Bar number and a statement that fines and other charges will be paid at the disbursement closing proceedings. This also does not apply to public service companies, railroads, or cable system operators. Situations where the Danville Redevelopment and Housing Authority is the grantee of a deed are excluded. Deeds prepared under the supervision of the Attorney General's Office are also exempt.
    - Attorneys and clerks will be immune from any suits arising from the pilot project, unless there is gross negligence or willful misconduct.
    - A report of the project would be returned to the Housing Commission before May 2020.
- **Laura Lafayette**, *Governor Appointee*: The attorney will put that explicit statement on the deed that everything will be satisfied at the disbursement of closing proceeds. The attorney will do that to avoid getting approval from the city director of finance?
    - **Clement:** If he is the closing attorney, then yes.
- **Lafayette:** One of the challenges in selling property is that the value of property is lower than the tax lien, correct?
    - **Clement:** I believe there were only 120 deeds in the City of Danville that were put on record with delinquent taxes. I think that is 10%.
- **Dicks:** The Danville clerk is committed to the process, and all economic concerns have been alleviated. The clerks are in support. The Realtors Association is looking for a way to target properties that are a problem.
- **Clement:** In the standard real estate settlement, this does not apply. We believe the local bar will cooperate. These are pretty isolated circumstances.
- **Earl Reynolds**, *Deputy City Manager, City of Danville:* This is an important piece of legislation for us. I believe this would be of great value for localities across the Commonwealth dealing with blight.

- **Dicks:** I suggest that the request would be to send this to the Full Commission without a recommendation, and narrow the scope of this bill down to those areas that are being an issue. I also suggest a control test.
    - **Clement:** I don't believe we can get this bill much narrower, and it does not apply to all transactions. It does not apply to 99% of transactions. I am confident the local bar will cooperate and help make this a success.
- **Delegate Peace:** Would a deed given as a gift be included?
    - **Clement:** Absolutely.
- **Delegate Peace:** What if there is a situation where a deed passes by probate and the new deed is not recorded?
    - **Clement:** This does not address this situation.
- **Delegate Peace:** Do you think this could possibly be an issue, as this can be a common issue in Richmond?
    - **Reynolds:** No, we have never had this specific issue.
- **Flynn:** To create consistency, would section three read "Danville or Redevelopment and Housing Authority," not "Danville Redevelopment and Housing Authority?" I think it would be good to include the City of Danville as a recipient. Also, should there be an "or" before "(iii)?"
    - **Clement:** I think that sounds like a good idea.
- **Jeff Palmore**, *Reed Smith*: We are concerned about the precedential value this would set, and then taking this beyond Danville. The attorney becomes the tax collector in this bill. If we can narrow the universe of properties applicable in this bill, we would be more comfortable.
- **Delegate Peace:** Of the proceeds held in escrow to be disbursed, those owed to the locality have priority status in respect to other judgments and liens. That is standard process.
- **Matt Bruning**, *Virginia Bankers Association*: I don't think there is a priority title issue. We would like to ensure that the section of applicable properties is well defined, and there are other people allowed to do settlement under Virginia law who may be applicable under that exemption.
    - **Clement:** This pilot project only applies to 120 deeds, so I do not know if the scope can get much more narrow. I hope you will support the legislation.
- **The motion to forward the bill on to the Full Commission without recommendation passed.**

V. Disclosures in Historic Districts

- **Chip Dicks:** In addition to red-flag disclosures, the buyer would be directed to look at additional materials regarding renovation of historic properties. This may not be everything we would like, but it is a good step in the right direction.

- **Sherri Neil**, *City of Portsmouth*: There are no set regulations on how historic districts are set up. We would have preferred a check box to alert a consumer that they are purchasing a property in a historic district. However, we understand this is the best we can do right now, and we appreciate everyone's hard work.
- **Michelle Gowdy:** On behalf of Ms. Harris-Braxton and VML and First Cities both, we support the legislation and Ms. Neil's comments.
- **The motion to recommend the legislation to the Full Commission passed.**

VI. Public Comment

- **Delegate Peace** asked for any public comment.

VII. Adjourn

- Upon hearing no request to comment, **Delegate Peace** adjourned the meeting at 2:50 PM.