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# VIRGINIA HOUSING STUDY COMMISSION



2001 ANNUAL REPORT

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# VIRGINIA HOUSING STUDY COMMISSION

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**GENERAL  
ASSEMBLY  
OF VIRGINIA**

**The Honorable William C. Mims**

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33rd Legislative District  
*Leesburg*

**The Honorable Jackie T. Stump**

Vice Chairman  
Virginia House of Delegates  
3rd Legislative District  
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Virginia House of Delegates  
87th Legislative District  
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**The Honorable Terrie L. Suit**

Virginia House of Delegates  
81st Legislative District  
*Norfolk*

**The Honorable Mary Margaret Whipple**

Virginia State Senate  
31st Legislative District  
*Arlington*

**The Honorable Donald L. Williams**

Virginia House of Delegates  
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**The Honorable Martin E. Williams**

Virginia State Senate  
1st Legislative District  
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**Mr. F. Gary Garczynski**

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**Nancy M. Ambler, Esquire**

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# TABLE OF CONTENTS

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INTRODUCTION .....	5
EXECUTIVE SUMMARY .....	9
HOUSE BILLS 715 AND 2311; HOUSE JOINT RESOLUTION 224; AND SENATE BILL 1423: COMMON INTEREST COMMUNITY ASSOCIATIONS .....	12
HOUSE BILL 2471: VIRGINIA MORTGAGE LENDER AND BROKER ACT .....	16
HOUSE JOINT RESOLUTION 257: RURAL HOMELESSNESS .....	18
HOUSE JOINT RESOLUTION 619: EMINENT DOMAIN .....	25
HOUSE JOINT RESOLUTION 620: NEW BUILDING PRODUCTS .....	29
SENATE JOINT RESOLUTION 437: MANUFACTURED HOUSING .....	32
SENATE JOINT RESOLUTION 446: HOMEOWNERSHIP OPPORTUNITIES FOR MINORITIES AND NEW IMMIGRANTS .....	36
VIRGINIA HOUSING STUDY COMMISSION 2001 WORK GROUPS .....	39

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# INTRODUCTION

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## BACKGROUND

Established by the 1970 Virginia General Assembly, the Virginia Housing Study Commission was originally mandated “to study the ways and means best designed to utilize existing resources and to develop facilities that will provide the Commonwealth’s growing population with adequate housing.” The Commission was further directed to determine if Virginia laws “are adequate to meet the present and future needs of all income levels” in Virginia, and to recommend appropriate legislation to ensure that such needs are met.

The Commission is comprised of eleven members, including five members of the Virginia House of Delegates, three members of the Virginia State Senate, and three gubernatorial appointees. Senator William C. Mims serves as Chairman of the Commission.

The Commission has long been recognized as a forum for new ideas in housing and community development, and as a focal point for developing consensus for such ideas in the form of landmark statutory, regulatory, and non-governmental initiatives. Nationally, the Commission is the only such entity that works closely with the public and private sectors, nonprofit organizations, and private citizens to develop workable and sustainable responses to housing and community development challenges and advocates for the implementation of those initiatives. Commission recommendations have led to homeownership for thousands of Virginians, job creation and retention in localities large and small, enhanced fire safety and building code consumer protection, and neighborhood revitalization across the Commonwealth.

## 1971 - 1987

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From 1971 throughout the early 1980s, the Commission introduced numerous legislative initiatives, subsequently passed by the Virginia General Assembly, to further its goal of ensuring safe, decent affordable housing for every Virginian. Commission accomplishments during that time period include:

- establishment of a state office of housing, now the Virginia Department of Housing and Community Development
- establishment of the Virginia Housing Development Authority
- passage of the Uniform Statewide Building Code, and establishment of the State Technical Review Board and local boards of building appeals
- passage of the Virginia Residential Landlord and Tenant Act
- passage of the Virginia Mobile Home Lot Rental Act
- promulgation of design standards to ensure accessibility by disabled persons to public buildings
- passage of numerous legislative initiatives to foster effective operation, management, and creativity of Virginia redevelopment and housing authorities
- passage of the Virginia Condominium Act
- passage of the Virginia Real Estate Cooperative Act
- passage of the Virginia Timeshare Act
- passage of legislation coordinating fire safety programs in Virginia.

## 1987 - 1999

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Following a period of dormancy, the Housing Study Commission was reactivated in 1987. That year, the Commission proposed the creation and capitalization of the landmark Virginia Housing Partnership Fund. In 1988, at the Commission’s recommendation, the

General Assembly established the Fund and increased state allocations for housing programs from \$400,000 to \$47.5 million for the 1989-90 biennium. Other successful 1987-88 recommendations include the establishment of a Virginia income tax voluntary contribution program for housing programs, the Virginia Housing Foundation (now the Virginia Community Development Corporation), and the annual Governor's Conference on Housing (now the Virginia Housing Conference).

Commission recommendations embraced by the 1989 General Assembly include: a state low-income housing tax credit program; state authorization of such flexible zoning techniques as planned unit developments, mixed unit developments, and density bonuses; and exemption of nonprofit housing organizations from tangible personal property tax on materials purchased for the development of affordable housing.

In 1990, the General Assembly approved additional Commission initiatives, including: creation and capitalization of the landmark Indoor Plumbing Program; a tax credit program for landlords providing rent discounts to low-income elderly or disabled tenants; a statutory mandate that localities study affordable housing in preparing their comprehensive plans; and legislation requiring localities to provide for the placement of double-wide manufactured housing in districts zoned primarily for agricultural purposes.

Commission recommendations passed by the 1991 General Assembly include: amendments to the Virginia Fair Housing law to ensure that Virginia law is substantially equivalent to federal law; amendments to the Virginia Residential Landlord and Tenant Act reducing the exemption for single family rental housing from ten to four units held by owners of such property (and thereby ensuring that some sixty percent of such rental units in the state are covered by the Act); and establishment of a Virginia Manufactured Housing Licensing and Transaction Recovery Fund.

The 1992 General Assembly approved the following Commission recommendations: comprehensive consumer protection language in the Virginia Mobile Home Lot Rental Act; a one-time right of redemption of tenancy prior to an action for eviction or unlawful detainer; expansion of the Virginia tax credit program fostering rent discounts to low-income elderly or disabled tenants; and restoration of the Virginia Housing Partnership Fund to the Virginia General Fund Budget.

In its 1993 Session, the General Assembly adopted comprehensive Commission recommendations related to the operation and management of condominium, cooperative, and property owners' associations. The Assembly also adopted the Commission's landmark legislation designed to assert the responsibility of localities to consider the affordable housing needs of a more broadly defined community, as well as its recommendations to extend the innovative state tax check-off for housing and rent reduction tax credit programs.

In 1994, the General Assembly approved Commission recommendations to ban self-help evictions in the case of all residential leases and allocate additional funding for the Virginia Homeless Intervention Program, both adopted to help prevent homelessness. In the area of blighted housing, the Assembly approved Commission recommendations which authorize localities to: acquire and rehabilitate or clear individual properties which constitute "spot blight" in a community; require the issuance of certificates of compliance with current building regulations after inspections of residential buildings, located in conservation and rehabilitation districts, where rental tenancy changes or rental property is sold; and control the growth of grass and weeds on vacant property as well as property on which buildings are located. The 1994 General Assembly also approved Commission recommendations authorizing all Virginia localities to develop affordable dwelling unit (ADU) ordinances and authorizing VHDA to issue adjustable rate mortgage loans.

In its 1995 Session, the General Assembly adopted two Commission recommendations relating to landlord-tenant law in Virginia. In response to requests by tenants seeking to make their neighborhoods more safe, the Commission initiated expedited eviction proceedings where a tenant has committed a non-remediable criminal or willful act which poses a threat to health or safety. In response to requests to help prevent eviction-related homelessness, the Commission initiated reform of Virginia removal bonds, fostering removal of eviction actions from general district to circuit court in cases not involving nonpayment of rent. The 1995 General Assembly also adopted the Commission's comprehensive package of legislation addressing blighted and deteriorated housing. These bills: address violations of the Virginia Uniform Statewide Building Code by clarifying that every Virginia circuit court has jurisdiction to award injunctive relief in cases involving USBC violations and by mandating that local building departments enforce Volume II (Building Maintenance Code) of the USBC where the department finds that there may be an unsafe situation; foster local government removal of graffiti from public or private structures; assist localities to identify and locate owners of blighted properties by requiring the name and address of the owner of real property in local land book records; and authorize localities without redevelopment and housing authorities to engage in "experiments in housing," such as homesteading programs.

The Commission's 1996 recommendation focused on expansive ("shrink-swell") soils, building code matters, and community land trusts. Its landmark legislation on soils and related building code issues was embraced by the General Assembly and set new standards in providing localities, the homebuilding industry, and homeowners a framework for addressing problem soils found statewide.

The 1997 General Assembly approved the Commission's package of legislation relating to such issues as preservation of affordable housing subsidized under federal programs and with subsidy contracts expiring; homeless children; common interest communities; and the composition of the state Board of Housing and Community Development.

The 1998 General Assembly adopted the Commission's legislation focusing on the following broad areas of study: strategies to foster installation of indoor plumbing; residential rental security deposit returns and interest rates; condemnation by public housing authorities; common interest community association issues; education and licensure issues relating to the multifamily residential housing industry; and allocations and production data for the Virginia Housing Partnership Fund.

In its 1999 Session, the General Assembly approved Commission legislative recommendations stemming from its three diverse and complex 1998 study issues: fire sprinkler systems in multifamily residential buildings; establishment of an entity to foster the preservation of affordable housing; and affordable assisted living options for Virginia's seniors. (The Commission issued some forty recommendations following its two-year comprehensive assisted living study.)

The 2000 General Assembly embraced the Commission's proposed comprehensive reorganization of the Virginia Residential Landlord and Tenant Act in a more logical and technically accurate format with more clear and updated provisions. Other Commission recommendations not requiring legislation addressed provisions of certain municipal services to homeowners by their common interest community associations and the localities in which such associations are located; carbon monoxide safety issues relating to chimneys, fireplaces, and vents for solid fuel-burning appliances; and the creation of a new foundation to preserve affordable housing in the Commonwealth.

In its first Session of the new millenium, the General Assembly unanimously adopted the Commission's eminent domain reform legislation. This comprehensive package of bills

was crafted to ensure greater balance of rights and responsibilities of both local housing authorities redeveloping neighborhoods and property owners whose land, homes, and businesses lie in path of redevelopment. In addition, members of the 2001 Session adopted the Commission's bill to foster harmony, increased property values, and decreased litigation among common interest community associations through the establishment of a state liaison position within the Virginia Real Estate Board. Commission 2001 proposals to refine further various provisions of the Virginia Residential Landlord and Tenant Act were also successful, as was Commission legislation designed to clarify that the Uniform Statewide Building Code supersedes the provisions of certain local ordinances.

### **2001 WORK PROGRAM**

In addition to approving the Commission's 2000 recommendations, the 2001 General Assembly also requested the Commission's leadership in addressing ten bills and resolutions focusing on myriad issues. Senator Mims assigned these issues to eight Work Groups, each chaired by a legislative member of the Commission. The Work Groups (and some Work Group task forces) held an unprecedented *twenty-seven* meetings. In addition, Senator Mims convened three meetings of the full Commission, including a June organizational meeting at which members received briefings from the Commission Executive Director and from the Directors of its state and federal housing and community development agency partners; a September meeting in conjunction with the Virginia Housing Conference at which Work Group Chairs presented interim study reports; and a November meeting at which, after reviewing public comment submitted in writing, issue papers, and Work Group recommendations, the Commission reached unanimous consensus on the recommendations published in this report.

In conjunction with legislative, public information, and study activities, the Commission responded to hundreds of inquiries regarding housing and community development policy, finance, statutory, and regulatory issues. Commission members and the Executive Director also participated in eight of nine Regional Housing Needs Forums convened at the request of the Virginia Secretary of Commerce and Trade. The Commission was honored for its three decades of leadership by the Virginia Housing Coalition on the occasion of the Coalition's gala Twentieth Anniversary Celebration.

The Commission Executive Director also met regularly with board members and key staff of the Virginia field offices of the U. S. Department of Housing and Urban Development and the U. S. Department of Agriculture/Rural Development, Department of Housing and Community Development, Virginia Housing Development Authority, Virginia Interagency Action Council for the Homeless, and Virginia Housing Coalition, as well as housing advocates, government officials, and industry representatives from around the Commonwealth. In addition to serving as a member of the Boards of Directors of the Virginia Foundation for Housing Preservation and the Preservation Alliance of Virginia, the Director also played an active role in the national housing and community development arena, serving as a member of the Board of Directors of the National Housing Conference; as Chair of the American Bar Association Forum on Affordable Housing and Community Development Law/Committee on State and Local Programs; and as a representative to the ABA Commission on Homelessness and Poverty.

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*The Commission and its Executive Director express sincere appreciation to Ms. Nancy D. Blanchard for her wonderful assistance and myriad contributions to Commission activities and accomplishments.*

## EXECUTIVE SUMMARY

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Following is a brief summary of Virginia Housing Study Commission unanimous recommendations to the Governor and the 2002 General Assembly of Virginia.

The Commission considered issues raised in four pieces of legislation relating to **common interest community associations**. The Commission continued its 2000 study relating to House Bill 715 (nonjudicial foreclosures by associations) as well as its 2000 study, as requested under House Joint Resolution 224 and relating to HB 2311, addressing community association reserve funds. In addition, Senate Bill 1423, relating to transfer of declarant control, was referred to the Commission for study.

In response to HB 715, the Commission agreed that, given that the National Conference of Commissioners on Uniform State Laws will release a draft of a nonjudicial foreclosures uniform statute in 2002, it would be advisable to review such draft statute prior to proceeding with any possible recommendations. The Commission recommends that, as part of the "cover sheet" for the association documents provided purchasers of homes governed by associations prior to closing, the Real Estate Board print, in boldface type, that nonjudicial foreclosures can be exercised by an association in the event of non-payment of assessments by a homeowner.

In response to HJR 224 and HB 2311, the Commission agreed that the current status quo, in which no legislative guidance is provided relating to association reserves, is not acceptable, and that ongoing lack of legislative direction could result in diminished property values due to inadequate property and common area maintenance resulting, in turn, in reduced property tax revenue for localities. Accordingly, the Commission proposes comprehensive legislation, relating to association reserve funds, requiring that association boards conduct a study, at least every five years, to determine whether and to what extent reserves are needed to repair or replace association common elements. Boards must review the study results to determine the adequacy of current reserves and make such adjustments as may be necessary to maintain the reserves. If the study indicates a need to budget for reserves, boards must include in the association budget specific information relating to the estimated budgetary needs and current amount of reserves set aside, together with a general statement as to how such estimates have been derived and the reserves accumulated.

In addition, the Commission recommends that the Virginia Real Estate Board Community Associations Liaison publicize the applicability of *Code of Virginia* Section 15.2-2400 (relating to the creation of service districts by localities) to situations in which associations are lacking adequate reserves and facing major capital outlays to meet infrastructure needs. Finally, the Commission recommends that, effective January 1, 2003, the corpus and interest on properly constituted association reserve funds should be exempt from Virginia state income taxation.

In response to SB 1423, the Commission crafted amendments to applicable *Code of Virginia* provisions relating to transfer of control of a development from the developer to the homeowners' association and agreed to provide such language to the bill's chief patron.

House Bill 2471, referred to the Commission for study, relates to the **Virginia Mortgage Lender and Broker Act** (VMLBA). Interpretation of the specific VMLBA provisions before the Commission for review, relating to the VMLBA "dual compensation prohibition" and the "grandfather" provision, was rendered by counsel for the



Virginia State Corporation Commission. In turn, the Commission recommends further study of the issues, pending further review by interested parties.

The Commission concluded its two-year study of **rural homelessness** pursuant to House Joint Resolution 257. Conducted with assistance from the Virginia Interagency Action Council for the Homeless and the Virginia Center for Housing Research, the study provides the first such comprehensive research and analysis in the nation. Key findings from a February 2001 survey of homelessness in rural Virginia include: a monthly total of between 1,829 and 2,817 homeless persons, with a substantial majority living in Southwest Virginia; less than two-thirds living as a household; three-fourths white; one in five black; slightly more females than males; nearly one-third of adults employed; one-third under 18; majority between 18 and 49; nearly 80 percent had their last place of residence within the same Planning District Commission area where they applied for assistance. Reasons for homelessness among rural Virginians include: mental illness and/or retardation, lack of basic life skills, loss of employment, lack of effective referral systems for services which, if any, may be located several hours away, and lack of long-term, intensive case management.

The Commission recommends a bold new pilot project designed to reduce and, ultimately, eliminate homelessness in rural areas. The project, to be administered by the Virginia Department of Housing and Community Development using \$150,000 in Virginia Federal Shelter Grant funds, and coordinated through a single "umbrella" agency, would utilize a comprehensive, regional system of outreach, intake and assessment, service referral, and case management for families and individuals who are homeless or at risk of homelessness.

Noting that one of the key challenges facing such families and individuals is finding permanent (as opposed to transient) safe, sound, affordable housing, the Commission also recommends, as it did in its 2000 Annual Report without legislative success, creation of a statewide, community Self-Help Program, capitalized with \$2.0 million in state funds to foster projects in which community members may assist in installing infrastructure that will provide **clean drinking water** to their homes.

House Joint Resolution 619 continues the Commission's work in reforming **eminent domain** law in Virginia. The Commission's study and recommendations focus on four major issues: termination of possible property acquisitions under certain unreasonably long-term redevelopment projects; improvement of the condemnation appraisal and acquisition process; sunseting of certain eminent domain statutes; and reimbursement of certain litigation expenses. The Commission recommends that, after July 1, 2007, property may no longer be acquired by a housing authority under Norfolk's East Ocean View Redevelopment Plan (first adopted in July 1989) unless the authority has made an offer or initiated condemnation proceedings on such property prior to that date, thereby lifting the cloud of uncertainty that has hung over property owners in that redevelopment area for some thirteen years.

In addition, in an effort to bring the parties closer together on the price offer and avoid litigation costly to both the court system and the parties involved, the Commission recommends a mandatory, court-ordered, pre-trial settlement conference, to be conducted by the court, in condemnation cases in which either party requests the same. The Commission also recommends removal of July 1, 2002, sunset provisions relating to *Code of Virginia* sections (and related subsections) 25-46.5, 25-46.9, 25-46.32, and 33.1-89, all relating to the eminent domain appraisal and acquisition process. Finally, noting the inequities that may exist even when a property owner prevails on a condemnation price

offer issue in litigation, the Commission recommends concluding its eminent domain study in 2002 with a focus on reimbursement of certain litigation expenses.

House Joint Resolution 620 requests the Commission to study whether warranties or other forms of insurance should be required for **new building products** introduced into the housing construction market. Commission members were advised that the failure of certain formulations of new building products in recent years has resulted in multi-millions of dollars in damages paid for repairs and/or replacements by individuals and/or their homeowners' associations. It was further stated that most such potential claimants are effectively barred from even a hearing pursuant to these damages due to Virginia's statutes of limitations and statutes of repose, although theoretically the system of checks and balances should protect consumers. Given the complexity of the study, the Commission recommends concluding it in 2002, focusing on nine key areas of discussion identified in prior deliberations.

Senate Joint Resolution 437 requests the Commission to study the impact of new home building technologies and current building code inspection systems on the availability of affordable housing. The Commission focused its study on the design and affordability of new **manufactured homes** and the inspection systems relating to such homes in comparison to modular and site-built homes. Accordingly, the Commission recommends that all localities adopting and enforcing zoning ordinances must define as single family dwellings new, multi-section manufactured homes with a minimum width of 24 feet, with a minimum 5/12 roof pitch, on an individual lot, and on a permanent foundation with masonry skirting, and must permit such homes in any residential zoning district that permits single family dwellings constructed to the Uniform Statewide Building Code.

Senate Joint Resolution 446 requests the Commission to recommend strategies that would foster **homeownership opportunities for minorities and new immigrants**. To date, the study has focused on local government partnerships, location-efficient mortgages, employer-assisted homeownership, affordable community association (including condominium and cooperative) structures, and predatory and sub-prime lending practices. In consideration of recent positive market changes and the lending climate, including historically low interest rates, aggressive new lending products introduced by the secondary mortgage markets, and seven new lending products created by the Virginia Housing Development Authority, the Commission recommends concluding its study in 2002 with a focus on certain current lending practices.

# COMMON INTEREST COMMUNITY ASSOCIATIONS

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## ISSUE

The Virginia Housing Study Commission was requested to address four pieces of legislation relating to common interest community associations. The Commission continued its 2000 study of House Bill 715, chief patroned by Delegate Michele McQuigg and relating to nonjudicial foreclosures by associations, and House Joint Resolution 224, chief patroned by Delegate Alan A. Diamonstein at the request of the City of Newport News and relating to adequacy of condominium association capital reserve funds. In addition, House Bill 2311, chief patroned by Delegate V. Earl Dickinson and relating to authorization of boards of directors of property owners associations to impose capital improvement fees, and Senate Bill 1423, chief patroned by Senator Benjamin J. Lambert, III, and relating to transfer of declarant control and disclosure statements of property owners associations, were referred to the Commission and incorporated into and passed as part of Senate Joint Resolution 446, chief patroned by Senator Mary Margaret Whipple. Commission Chairman Senator Bill Mims chaired the Commission Community Associations Issues Work Group, to which he also appointed current and former association board members and officers, non-board member association homeowners, attorneys representing association boards, association managers, housing industry representatives, and local and state government officials. Senator Mims convened four meetings of the Work Group.

## ADEQUACY OF CAPITAL RESERVE FUNDS

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The first meeting of the Work Group focused primarily on the study relating to adequacy of capital reserve funds. Key discussion areas included:

- notice to purchasers of homes in associations (i.e., when and how such notice should be provided)
- requirement of reserve studies (i.e., whether mandated, benchmarks for mandate, if any, and how adequacy levels should be determined, if at all)
- requirement of reserves set-aside (i.e., whether mandated, what percentage of budget, decision by whom).

A significant portion of the third Work Group meeting also was devoted to capital reserves topics. Eight presenters discussed a number of issues, including the reserves study process, sample reserves funding policies of developers, sample large association funding policies, and the increasing need of funds and funding strategies as associations (and their infrastructure, such as roads and systems) age.

## DEVELOPER CONTROL OF ASSOCIATIONS

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The second meeting of the Work Group focused primarily on Senator Lambert's bill relating to developer control of associations and disclosures relating to planned development (including lots and common areas) as well as the plan for transfer of control of the development from the developer to the homeowners' association. Much of the discussion focused on the need of an association and its managers to have access to the developer's plat, plans, and specifications for the development. The Work Group crafted amendments to applicable *Code of Virginia* provisions relating to the issues on point and, accordingly, agreed to provide them to Senator Lambert.

## **NONJUDICIAL FORECLOSURES**

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Also at its third meeting, the Work Group focused on nonjudicial foreclosures by associations. Lucia Anna Trigiani, Esquire, a member of the firm of Troutman Sanders, Tysons Corner, and the Commission Executive Director provided Work Group members an overview of the study process and most recent National Conference of Commissioners on Uniform State Laws (NCCUSL) draft of a uniform nonjudicial foreclosures statute. In addition, Kenneth E. Chadwick, Esquire, a member of the firm of Chadwick, Washington, Fairfax, presented a report on approaches of other jurisdictions to nonjudicial foreclosures. Senator Mims restated his position that, given that the NCCUSL draft will be released in 2002, and that it would be advisable to review such statute prior to proceeding with recommendations on point, if any, prior to that time, the Work Group would not make recommendations relating to the Virginia nonjudicial foreclosures statute in 2001. However, the Work Group unanimously recommended that, as part of the "cover sheet" for the association documents provided purchasers of homes governed by associations prior to closing, the Real Estate Board print, in boldface type, that nonjudicial foreclosure can be exercised by an association in the event of nonpayment of assessments by a homeowner.

## **VIRGINIA HOUSING DEVELOPMENT AUTHORITY FINANCING PROGRAM**

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At their first meeting, several Work Group members expressed concerns regarding availability of financial capital to assist "troubled" associations increase their owner-occupancy rate as well as address their infrastructure needs. Accordingly, Ms. Toni M. Ostrowski, Virginia Housing Development Authority Single Family Division Business Products Manager, and Ms. Fay Silverman, Vice President, Southern Trust Mortgage, Norfolk, provided Work Group members at their second meeting an overview of mortgage loan financing available for nonconforming condominiums (i.e., those condominiums governed by associations in which a high number of units are investor-owned rather than owner-occupied). Ms. Ostrowski and Ms. Silverman focused their remarks on loan products available through a newly-created VHDA program designed to increase owner-occupancy in such associations. Their presentations, in turn, generated significant opportunity for exchange of information.

## **RECOMMENDATIONS**

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### ***Service Districts***

The final meeting of the Work Group included reports from seven members followed by a collegial intense and provocative discussion, during which options for addressing capital needs funding shortfalls were considered and recommendations relating to adequacy of association capital reserve funds were crafted. Ms. Christine O. Bridge, representing the City of Newport News, reported on a conference call of several Work Group members and the Commission Executive Director convened to consider *Code of Virginia* Section 15.2-2400 *et seq.*, which provides for the creation of service districts by localities. Such service districts may be created by ordinance within a locality to collect revenue and provide services in addition to those desired in the locality as a whole. Conference call participants suggested, and Work Group members subsequently agreed, following discussion, that such service districts could indeed address problematic, significant revenue shortfalls faced by older associations lacking adequate reserves and facing major capital outlays to meet infrastructure needs — situations that triggered HJR 224 and HB 2311. The Work Group

unanimously recommended that the new Virginia Real Estate Board Community Associations Liaison publicize this revenue and services option to associations.

### ***Reserve Funds***

The majority of the remainder of the meeting was devoted to a discussion of possible legislative responses to the issue of adequacy of association reserve funds. Senator Mims provided navigational expertise in piloting Work Group members through queries designed to identify what recommendations, if any, should be presented relating to association reserves. As a first step, members unanimously agreed that the current status quo, in which no legislative guidance regarding reserves is provided, is not acceptable. Members concurred that the need for reserve funds had been clearly stated during its deliberations, and that lack of legislative direction could result in diminished property values due to inadequate property and common area maintenance. In turn, such eroded values would result in reduced property tax revenues for localities in which declining associations are located. Accordingly, the Work Group recommended a proactive, flexible response to the capital reserves issue.

The Group discussed potential legislative and/or administrative responses to the current situation. With one exception, Work Group members agreed that, at a minimum, additional disclosure regarding the status of an association's reserves should be provided to its members and, prior to closing, as part of the resale certificate provided to purchasers of homes in associations.

On a vote of 8-5, the Work Group also favored a more comprehensive response: a "study" of reserves. On a subsequent vote of 11-3, members strongly favored a requirement relating to reserves funding levels. The Group reviewed provisions of reserves statutes of Florida, Hawaii, Nevada, and Oregon, and strongly favored the Nevada statute as a model starting point for deliberations for potential Virginia legislation. Members were particularly impressed with Nevada statutory provisions requiring that an association's annual budget include a budget for reserves, that funding be "adequate on a reasonable basis," that reserves be restricted in expenditure usage, that a reserves study be conducted at least every five years, and that a reserves study be reviewed annually. Nevada does not dictate a minimum percentage basis or fully funded reserves, nor does it require that the reserves study be conducted by an independent professional, nor does it require developers to fund reserves prior to conveyance of the association's common area.

Work Group members unanimously agreed that statutory requirements for reserves should apply to all common interest associations (e.g., condominiums, cooperatives, and property owners' associations). Members also agreed that current requirements relating to reserves for condominium conversions are adequate.

The Work Group unanimously agreed that a Virginia statute requiring reserves should not dictate reserves by dollar amount or as a percentage of operational expenses, but, rather, should be more an expression of concept. Members also unanimously agreed that an association should review the status and adequacy of its reserves at least every five years, including determining whether adequate allocations have been set aside, whether projected interest was earned on reserves deposits, whether projected expenditures were made as planned, and the life expectancy and maintenance needs of large systems (e.g., mechanical, structural, or infrastructural). Members agreed that there should be no statutory definition for the term "study."

In concluding their discussion of the proposed reserves statute, on a vote of 7-6, Work Group members favored a statute silent on the issue of restrictions for expenditures of association funds set aside for capital reserves. While members unanimously agreed that such funds should not be expended for ordinary maintenance, but, rather, only for repair,

replacement, or restoration, the majority believed that flexibility should be available in the event of such emergencies as costly snow removal due to blizzard conditions.

In sum, the Work Group agreed on the following concepts for incorporation in a proposed reserves statute.

- Association boards must conduct a study, at least once every five years, to determine whether and to what extent reserves are needed to repair or replace association common elements.
- Boards must review the study results to determine the adequacy of current reserves and make such adjustments as may be necessary to maintain the association reserves.
- If the study indicates a need to budget for reserves, boards must include in the association budget specific information relating to the estimated budgetary needs and current amount of reserves set aside, together with a general statement as to how such estimates have been derived and the reserves have been accumulated.

### ***State Taxation of Reserve Funds***

Finally, the Work Group addressed the issue of state taxation of reserve funds. Currently, the Commonwealth provides for tax exempt status for reserves with restricted funds, and the existing federal taxation exemption is predicated on fund restrictions. Work Group members unanimously recommended that, effective January 1, 2003, the corpus and interest on properly constituted association reserve funds should be exempt from Virginia state income taxation. As Chairman of the Housing Commission, Senator Mims will communicate to Delegate Robert F. McDonnell, Chairman of the legislative Commission on Tax Policy in Virginia, such recommendation. In addition, the Housing Commission will monitor the work of the Tax Policy Commission and consider legislation to enact such recommendation if the same is not first recommended by the Tax Policy Commission.

In concluding its work for 2001, the Work Group on Common Interest Community Associations submitted the initiatives set forth above to the Housing Commission, which in turn unanimously adopted the same.

# VIRGINIA MORTGAGE LENDER AND BROKER ACT

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## ISSUE

House Bill 2471, chief patroned by Delegate Kenneth R. Plum, as passed, amended the Virginia Mortgage Lender and Broker Act (MLBA) to provide that a real estate broker, who is either an owner of an interest in a real estate firm or acts as a real estate broker in a sole proprietorship, may have an ownership interest in a mortgage broker or lender and may receive returns on investment arising from such ownership or payment of compensation for services actually performed for the mortgage broker or lender. As introduced, the bill would have exempted from the MLBA real estate brokers or salespersons who receive any compensation for directly or indirectly negotiating, placing, or finding a mortgage loan for others.

A request that the Virginia Housing Study Commission review the bill, as introduced, was incorporated into and passed as part of Senate Joint Resolution 446, chief patroned by Senator Mary Margaret Whipple. Commission Chairman Senator Bill Mims requested Delegate Terrie L. Suit to chair the Work Group addressing the issue. Senator Mims also appointed to the Work Group representatives of the real estate and mortgage lending and brokerage industries, as well as a nationally recognized consumer advocate and officials of the Virginia State Corporation Commission (SCC) and the Virginia Housing Development Authority.

## WORK GROUP DELIBERATIONS

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Delegate Suit convened one meeting of the Work Group. Although it was anticipated that representatives of the U.S. Department of Housing and Urban Development (HUD) Real Estate Settlement Procedures Act (RESPA) Office in Washington, D.C., would brief Work Group members on RESPA sections on point, the Commission Executive Director was advised at the close of business on the day prior to the Work Group meeting that RESPA counsel would be unable to attend due to other commitments. The Executive Director was also advised by the RESPA Assistant General Counsel that the HUD Associate General Counsel had advised that HUD would provide only written responses to Commission written inquiries on point. The Director was referred to the HUD RESPA Office Internet site for general information.

At the Work Group meeting, Ms. Susan E. Hancock, Deputy Director of the SCC Bureau of Financial Institutions, briefed participants on *Code of Virginia* Sections 6.1-422(B)(5) and 6.1-422(C), relating to the study issue. Given the numerous queries posed by Work Group members and interested parties relating to interpretation of such *Code* subsections, Delegate Suit requested that the SCC provide a formal written interpretation of the statutes on point to the Work Group. Delegate Suit also requested from Ms. Hancock information as to which SCC staff interpret the *Code* sections on point and the process of such interpretation. In addition, Delegate Suit requested information setting forth which parties are and which parties are not subject to such *Code* sections, given exemptions to the MLBA.

Jonathan B. Orne, Esquire, SCC Associate General Counsel, in turn rendered the SCC's interpretation of the "dual compensation prohibition" under *Code of Virginia* Section 6.1-422(B) and the "grandfather" provision under *Code of Virginia* Section 6.1-422(C). It is Mr. Orne's opinion that Virginia *Code* Section 6.1-422(B)(5) prohibits a "person" (as statutorily defined in *Code* Section 6.1-409) required to be licensed as a mortgage broker

under the MLBA from receiving compensation for residential mortgage loan brokerage services provided unless the consumer is given a statutory notice form before such services are offered and either 1) such person will also receive compensation for real estate brokerage services in connection with the residential purchase or 2) such person is "affiliated" (as statutorily defined) with another person who will be receiving compensation in connection with the residential purchase. Mr. Orne reiterated that those persons exempt from MLBA licensure requirements are not subject to the dual compensation provision.

It is Mr. Orne's further opinion that Virginia *Code* Section 6.1-422(C) prohibits such dual compensation even if the statutory disclosure is made unless such person was engaged in business as a mortgage broker on or before February 25, 1989. Finally, Mr. Orne clarified that subsection (C) provides that the MLBA does not prohibit a licensed real estate broker from having an ownership interest in a mortgage lender or broker or receiving returns on such ownership interest, or receiving compensation for services performed for a mortgage lender or broker in which such real estate broker has an ownership interest. Mr. Orne stated, parenthetically, that such services performed for a mortgage lender or broker would be those presumably other than mortgage loan brokerage services.

Following receipt of the SCC opinion, Delegate Suit distributed the same to Work Group members for their review. Without opposition from members, Delegate Suit recommended that, pending further discussion, the Virginia Housing Study Commission continue the Mortgage Lender and Broker Act study in 2002 to ensure consensus among all interested parties, statutory clarity, and consumer protection. The Commission unanimously adopted her recommendation.



# RURAL HOMELESSNESS

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## ISSUE

House Joint Resolution 257 (2000), chief patroned by Delegate Jackie T. Stump, and continued under Senate Joint Resolution 446 (2001), chief patroned by Senator Mary Margaret Whipple, requests the Virginia Housing Study Commission, with assistance from the Virginia Interagency Action Council for the Homeless (VIACH), to study the number and needs of homeless persons in rural areas of the Commonwealth and recommend strategies to foster their self-sufficiency. The VIACH, which is sponsored by the Virginia Department of Housing and Community Development, was established in 1990 to coordinate services and programs for homeless persons in Virginia. As such, the statewide leadership organization is comprised of representatives of federal, state, and local governments, advocacy organizations, and housing and service providers.

## BACKGROUND

HJR 257 notes that the rural homeless are often “invisible” because, although they have no home of their own, they are often reluctant to ask for such limited assistance, if any, as may be available in the areas where they live. Accordingly, the VIACH Public Policy Subcommittee determined early in the study process that a survey was essential to determine such basic, comprehensive, statewide data as an estimated number of rural homeless persons, reasons for their homelessness, services available and unavailable to them, and services needed to foster their self-sufficiency. In the course of five meetings in 2000, the VIACH Subcommittee:

- defined the geographic area of the study
- completed an inventory of emergency shelter and transitional housing facilities receiving funds through the Virginia Department of Housing and Community Development (DHCD)
- mapped locations of housing and service providers by number of beds
- reviewed related surveys and types of information needed for the study survey
- identified survey designs and data analysis.

Dr. C. Theodore Koebel, Director of the Virginia Center for Housing Research and Professor at Virginia Tech, led the survey effort. Utilizing grant funds provided by the U.S. Department of Housing and Urban Development (HUD), Dr. Koebel engaged and worked closely with two Virginia Tech graduate student research assistants to create and prepare the survey instrument, enlist support from key state agency officials, test the draft instrument in sample areas, and mail the final survey to selected participants in four rural regions of the Commonwealth: Northern Neck/Middle Peninsula/Eastern Shore, South Central, Shenandoah, and Southwest.

The following were requested to participate in the survey, conducted in February 2001, in their respective regions:

- Departments of Social Services
- Community Services Boards
- Community Action Agencies
- emergency and domestic violence shelters
- Salvation Army centers
- Legal Services offices
- county sheriffs
- selected churches and nonprofit organizations.

Survey participants were asked to maintain a month-long log profiling (anonymously) the needs of their homeless clients and the reasons for their homelessness. February was selected as the most appropriate survey month because more homeless persons tend to seek services and shelter in colder months, and thus more data would be available to researchers if the survey were conducted at that time.

## **GROUNDBREAKING RESEARCH AND ANALYSIS**

In initiating the Rural Homelessness study, Subcommittee members completed a search of literature on point and available anecdotal information from such national organizations as the National Alliance to End Homelessness, the National Coalition for the Homeless, and the American Bar Association Commission on Homelessness and Poverty. In short, very little information on point is available. The relative lack of information at the national level in turn precludes extrapolation to permit observations about Virginia's rural homeless population. The study undertaken by the Housing Commission and VIACH, and particularly the survey undertaken by Dr. Koebel and his graduate students, are the first such comprehensive research and analysis on point. The groundbreaking effort will undoubtedly be of assistance to other jurisdictions and at the national level.

## **PRELIMINARY SURVEY RESULTS**

Preliminary survey results were disseminated at the Housing Commission 2001 Interim Meeting and are available on the Housing Research Center Website at: [www.caus.vt.edu/CAUS/RESEARCH/vchr/VCHR.html](http://www.caus.vt.edu/CAUS/RESEARCH/vchr/VCHR.html). Of the 248 agencies surveyed, 87 responded. Initial analysis of survey data indicates that there were between 1,829 and 2,817 homeless persons in rural Virginia in February 2001 and that, extrapolating, there were between 23,777 and 36,621 homeless person events in rural Virginia in 2001. (A homeless person event counts a homeless person for each month of that person's homelessness.) By far, most homeless persons in rural areas (more than half) live in Southwest Virginia. Half as many reside in the Shenandoah region, and the remaining number (dramatically fewer) live in the Northern Neck/Eastern Shore region or in South Central Virginia.

Less than two-thirds live as a household; one-fifth have two adults in the household. There are only slightly more females than males. Three-fourths are white; one in five is black. About one-third of the adults are employed. About one-third are under the age of 18; the majority are between 18 and 49; less than ten percent are 50 or older. Less than one-half had their last place of residence in the jurisdiction where they applied for services, but nearly 80 percent came from within the same Planning District Commission area. Nearly ten percent came from out of state.

Service providers identified the following as the primary five factors contributing to the homelessness of their rural clients: lack of affordable housing, domestic violence, mental illness, family break-up, and lack of job skills. Service providers cited as the most critical services needs transitional housing, transportation assistance, emergency rent assistance, and emergency shelter. Medical services and training in financial management were also ranked by service providers as critical needs of homeless persons in rural areas.

## **FOCUS GROUPS**

Following receipt of the preliminary survey results, three focus groups were convened by Dr. Koebel, VIACH, and the Commission. Participants were requested to review the

preliminary findings, evaluate factors contributing to homelessness, and offer recommendations given their experience in relationship to their respective clients and service areas.

The focus groups were convened in St. Stephen's Church (King and Queen County), in Charlottesville following the annual conference of the Virginia Coalition for the Homeless, and in Abingdon. All groups included providers of services to the homeless and other low-income populations. The St. Stephen's Church and Abingdon attendees represented areas more rural in character than did the Charlottesville attendees and some of the Charlottesville attendees were not actually service providers.

These are the recurrent themes and areas of concern expressed unanimously by attendees in St. Stephen's Church and Abingdon and by some Charlottesville attendees.

- Case Management Needs  
(including mandatory life skills training for all recipients of such public assistance as Section 8 or Temporary Assistance to Needy Families (TANF))
  - home maintenance, including cleaning skills and property preservation information
  - budgeting
- Transportation Needs
  - free or income-based
  - flexible schedules
- Increased Income and Services Funding Needs
  - community and corporate resources
  - state subsidies for SSI recipients
  - refundable Earned Income Tax Credit (noted only by Charlottesville attendees)
  - livable wage (noted only by Charlottesville attendees)
- Coordination/Collaboration Needs  
(among nonprofits, private sector, faith community, local housing authorities, and local, state, and federal agencies)
- Child Care Needs  
(especially for parents working non-traditional hours away from the home)
- Housing Needs
  - emergency shelter (including facilities to preserve intact families)
  - transitional housing
  - transitional housing-type services for residents of permanent housing
  - affordable, permanent housing
- Substance Abuse Prevention and Counseling Needs  
(particularly in areas experiencing a dramatic increase in substance abuse)
- Economic and Community Development Needs  
(to stimulate job creation and retention)
- Deinstitutionalization Challenges  
(relating to both the mental health and criminal justice systems, and without adequate community-based services and affordable housing)
- Prevention Opportunities
  - case management for residents of permanent housing
  - intervention/service referrals in the evictions process
  - continued TANF funding for the SHARE Homeless Intervention Program.

## **RECOMMENDATIONS TO COMMISSION WORK GROUP**

The VIACH Public Policy Subcommittee studying rural homelessness met five times in 2001. In addition, the three aforementioned focus groups were convened and, following the focus group meetings, the Subcommittee presented its findings to the full VIACH. That entity then adopted the findings of its Subcommittee.

Subsequent to VIACH's adoption of the Subcommittee's findings, Subcommittee members met for a final time for additional analysis of the themes that emerged during the focus group meetings and to finalize proposed recommendations to the Virginia Housing Study Commission 2001 Work Group on Rural Homelessness. Commission Chairman Senator Bill Mims requested that Delegate Jackie Stump chair the Work Group, to which Senator Mims also appointed representatives of nonprofit service providers, the private sector, the faith community, local housing authorities, and local, state, and federal agencies. Work Group members represented the four geographic areas of the Commonwealth surveyed by Dr. Koebel and his colleagues.

At the Work Group meeting convened by Delegate Stump, the Commission Executive Director first provided members an overview of the procedure of the VIACH Subcommittee's 17-month study, as described above. Mr. Adam Brown, one of the two graduate students ably assisting Dr. Koebel in the 2001 Rural Homelessness Survey, briefed the Work Group on Survey procedure and findings (also as described above).

Ms. Claudia Gooch, Chair of the VIACH Subcommittee on Rural Homelessness and Director of the Division of Community Planning and Development for The Planning Council in Norfolk, and Ms. Robbie Campbell, VIACH Chair and DHCD Shelter and Supportive Services Program Manager, then presented recommendations of the VIACH Subcommittee on Rural Homelessness.

## **VIACH RURAL HOMELESSNESS SUBCOMMITTEE PROPOSAL**

Following its intensive and ground-breaking seventeen-month study, the VIACH Rural Homelessness Subcommittee unanimously recommended a bold new pilot project designed to reduce and, ultimately, prevent, homelessness in rural areas of the Commonwealth. As clearly evidenced in the 2001 Virginia Rural Homelessness Survey conducted by the Virginia Center for Housing Research in conjunction with HJR 257, current approaches are inadequate to address homelessness in rural Virginia. Therefore, given research results and recommendations from focus groups in multiple areas of the Commonwealth, the VIACH Subcommittee recommended a new approach: a comprehensive, regional system of outreach, intake and assessment, service referral, and case management for families and individuals who are homeless or at risk of homelessness. The recommendation is based on the Subcommittee's key anecdotal and statistical findings about homelessness in rural Virginia, as follows:

- Individuals are homeless or facing homelessness for a myriad of principal reasons, including but not limited to mental illness, mental retardation, or borderline retardation, loss of employment, and lack of basic life skills.
- No single response or referral is effective for all homeless persons.
- Homeless persons are caught in a maze of referrals to services, which in rural areas may be located several hours from their current place of residence, if such services exist at all.
- Long-term, intensive case management (to be distinguished from, for example, a six-month transitional housing opportunity) is critical, in many cases, to break the cycle of homelessness.

The regional pilot would be coordinated through a single "umbrella" agency that would maintain 24-hour/7-day availability to all other members of the services system and would conduct "first point of contact" client interviews, needs assessments, and referrals. While the coordinating agency would provide few, if any, direct services, it may, in time, become part of the long-term case management system for life skills, if such component is needed in the services system.

The coordinating agency would be staffed with trained human services professional(s) and would maintain a data base of clients, referrals, and services provided or denied in order to avoid duplication and ineffective services approaches. The database would also provide accurate statistics regarding services requested, provided or denied, as well as demographic information on the service consumers. The coordinating agency would be responsible for reporting such statistical information to the services system and other requesting organizations. Other agencies in the services system would have access to database information through established confidentiality procedures.

## **OUTLINE OF PROPOSED PILOT PROJECT**

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- I. Outreach: Developing Community Awareness and Support for the Service and Maximizing Contact with Targeted Service Clients
  - Publicize availability of service through local Departments of Social Services, housing offices, Community Services Boards, local government offices, Planning District Commissions, local redevelopment and housing authorities, faith community, nonprofits (especially United Way referral services), hospitals, health clinics, community centers, and businesses (particularly restaurants)
  - Publicize (posters, laminated cards) through libraries, hospitals, churches/temples/mosques, government offices, Departments of Social Services, housing offices, convenience stores/neighborhood groceries, gas stations.
  
- II. Intake and Assessment: Defining Needs of Individuals and Families To Provide Appropriate Service Linkages
  - Toll-free telephone number for entire service area, 24-hour coverage (trained answering service, pager system, call forwarding)
  - Trained professional staff for client contact and determination of case management needs.
  - Intake instrument to identify current client housing situation, past services received, family composition, medical needs, disability issues (mental health, substance abuse, physical and/or sensory disabilities), income, debt
  - Confidentiality agreement/waiver to share client information with other service providers in order to establish linkages, verify past service history, effective and unsuccessful past interventions. If client refuses waiver, service limited to meeting immediate survival needs without long-term case management planning.
  
- III. Services Referral and Case Management: Making Appropriate and Effective Contacts for Identified Service Needs
  - Coordinating agency gains specific knowledge of available resources, populations served by such resources, and eligibility requirements through meeting and discussing the regional need with agencies providing services
  - Services system agencies agree to work through coordinating agency for appropriate referral and placement of homeless individuals or households

- Services system agencies agree to provide on-site services (when possible) (e.g., mental health workers go to shelter to meet with client, life skills/ self-sufficiency workers from DSS hold classes in shelter)
- Long-term case management, when appropriate, is provided by services system agency best suited to addressing primary need of household (e.g., physical/sensory disabilities, mental health, domestic violence, basic life-skills) and may require agency partnering in cases where multiple primary needs are identified
- Coordinating agency meets with interdisciplinary team to discuss needs of individual households, service plans, resolution of issues blocking progress to stable housing and self-sufficiency
- All actions taken, services provided or denied (and reasons for denial) are entered in database for future referral if contacted by household again.
- Services system agencies may receive information from database for service planning purposes, if acceptable confidentiality agreement on file and waiver from client also on file or recorded as part of service database record.

### **FUNDING FOR PROPOSED PILOT PROJECT**

The VIACH Subcommittee unanimously recommended a set-aside of \$150,000 from the Virginia SHARE Federal Shelter Grant (FSG) program, administered by DHCD, for reallocation to the pilot project it recommends to address rural homelessness. The DHCD Director is in general agreement with and supportive of the proposed pilot project and capitalization plan recommended by the VIACH Subcommittee. No legislation is necessary for the proposed initiative.

### **VIRGINIA'S FEDERAL SHELTER GRANT PROGRAM**

#### ***Background***

The FSG program is funded by the U. S. Department of Housing and Urban Development (HUD) Emergency Shelter Grants (ESG) program. FSG funds are distributed to states and entitlement cities or counties through a formula allocation. Designated entitlement areas in Virginia are the cities of Newport News, Norfolk, Portsmouth, Richmond, Roanoke, and Virginia Beach, and the counties of Arlington and Fairfax. The ESG funds administered by DHCD are awarded to local governments and nonprofit organizations outside of the designated entitlements.

#### ***Eligible Activities and Program Design History***

Eligible activities under Virginia's ESG/FSG program include the provision of essential supportive services to the homeless, operations of emergency shelter and transitional housing facilities, and development and implementation of homeless prevention activities. There is no limit to the percentage of funds used for operations. However, essential services are limited to 30 percent of the ESG allocation and prevention activities to 20 percent of the allocation.

#### ***Essential Services and Prevention Activities***

Set-asides for certain targeted activities are not at all unprecedented in the ESG/FSG program history. For instance, essential services and prevention activities were a part of Virginia's FY 1999 FSG program design. The essential services portion was awarded to three projects totaling \$90,000 and the prevention activities to two projects totaling \$22,800.

Essential services were also a part of the FY 2000 FSG program, limited to three demonstration projects of \$30,000 each. However, there were no suitable applications submitted.

#### *Operations*

The DHCD determines the awards for operations through a non-competitive approach by dividing the number of beds of all applicants who meet program eligibility requirements into the available funds for the fiscal year. Each grantee receives an award amount for the fiscal year for each eligible bed. The per bed amount for FY 2002 is \$513.26.

#### *Projected Impact of VIACH Proposed Program Design*

If Virginia's FY 2002 FSG program design had included a set-aside of \$150,000 for essential services and prevention activities, as outlined in the VIACH proposed pilot project, the per bed amount for FY 2002 would be \$452.24, a reduction of \$61.02 per bed for the fiscal year's award to emergency shelter and transitional housing facilities. There are 74 grantees with a total of 2,458 beds, and average of 33.22 beds, in FY 2002. In sum, there would be a reduction of about \$2,027 in operating expenses per grantee for the fiscal year, based on FY 2002 numbers of grantees and available funds.

### **RECOMMENDATIONS**

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The VIACH Subcommittee approached its study of rural homelessness in Virginia pursuant to HJR 257 with tremendous concern, dedication, and compassion. The study was very time-intensive, and the Subcommittee's body of work and recommendations reflect that intensity and commitment. The Subcommittee expressed optimism that, if implemented, its recommendations may significantly alter, for the better, generally accepted practices for addressing homelessness, particularly in rural areas. The Subcommittee expressed equal concern that, without an intensive, regional case management program such as that recommended, and without the cooperation and support of all appropriate regional and local entities, the *status quo* approach to the tragedy of homelessness will continue. Accordingly, the Commission Work Group on Rural Homelessness and, subsequently, the Virginia Housing Study Commission, unanimously adopted the work and recommendations of the VIACH Subcommittee.

Noting that one of the key challenges facing such families and individuals is finding permanent (as opposed to transient) safe, sound, affordable housing, the Commission also recommends, as it did in its 2000 Annual Report without legislative success, creation of a statewide, community Self-Help Program, capitalized with \$2.0 million in state funds to foster projects in which community members may assist in installing infrastructure that will provide clean drinking water to their homes.

# EMINENT DOMAIN POWERS OF LOCAL HOUSING AUTHORITIES

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## ISSUE

House Joint Resolution 619, chief patroned by Delegate Thelma Drake and incorporated into and passed as part of Senate Joint Resolution 446, chief patroned by Senator Mary Margaret Whipple, continues the work of the Virginia Housing Study Commission on the issue of eminent domain powers of local housing authorities. Specifically, the resolution requests the Commission to study current practices of certain such authorities in designating an area as a redevelopment area but not concluding the project in a timely manner. (In Norfolk, redevelopment of at least one neighborhood has been ongoing for thirteen years; in Roanoke, a redevelopment plan recently expired after 25 years.) Commission Chairman Senator Bill Mims requested that Delegate Drake chair the Commission Work Group on HJR 619, to which he also appointed representatives of local housing authorities, the homebuilding, financial, and realty industries, and small business, as well as property owners and advocates for owners affected by long-term, ongoing redevelopment.

## WORK GROUP DELIBERATIONS

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Delegate Drake convened four meetings of the Work Group. At the first meeting, the executive directors and/or counsel of the housing authorities of Fairfax County, Cumberland Plateau region in Southwest Virginia, Norfolk, and Roanoke reported on any long-term redevelopment projects underway by their respective authorities. In addition, three property owners and/or their advocates also reported on the way such long-term projects in Norfolk and Roanoke have affected them personally and financially. The executive director of the Newport News Housing Authority and an official of the Richmond Housing Authority reported on long-term redevelopment projects underway by their respective authorities at the second meeting. All of the reports generated significant discussion.

Also at the second meeting, Paul B. Terpak, Esquire, a member of the law firm of Blankingship & Keith in Fairfax, provided an overview of the eminent domain process and the process of the appointment of condemnation commissioners in the Commonwealth. In the discussion that followed, the group recognized that the condemnation process utilized by housing authorities and that used by the Virginia Department of Transportation and public utilities is in some ways different and perhaps should be reconciled. Such discussion provided an appropriate nexus to an overview of legislation introduced by members of the 2000 Joint Legislative Commission on Eminent Domain and reasons for the failure of all but one of the package of bills.

To conclude the meeting, Ms. Nancy McCord, Chair of Virginians for Property Rights, provided an overview of statutes of other jurisdictions relating to reimbursement of litigation expenses of property owners who have resorted to legal action to recover the fair market value of their property condemned by a public or quasi-public body. The Work Group adjourned with agreement that, although most condemning authorities do not abuse their privilege of eminent domain, safeguards must be put into place so that abuses such as those that have occurred can be precluded or mitigated in the future. Members also agreed to focus first on improving the condemnation process prior to addressing the issue of litigation reimbursement.

The third meeting focused primarily on the property appraisal process as it relates to condemnation. Messrs. Robert E. Barton of Barton & Company, Richmond, P. Glenn James of Commercial First Appraisers, Norfolk, and Edward B. (Barry) Wright, Jr., of



Wright Realty, Manassas, provided an overview of that process and discussed options for its improvement. Following a review of the so-called “quick take” condemnation process by VDOT Director of Rights of Ways Stuart A. Waymack, Work Group members unanimously declined to address quick take statutes. Following an overview by Mr. Paul Terpak of selected Virginia eminent domain statutes with July 1, 2002, sunset clauses, members requested information on all such statutes scheduled to sunset and set the issue for discussion at the next meeting.

The fourth and final meeting of the Work Group for 2001 covered an ambitious agenda that included reports from six members and the Commission Executive Director, discussion on a host of issues, and several unanimous legislative recommendations. To begin the meeting, Ms. Kay Carter, Senior Real Estate Specialist with Dominion Virginia Power, reported on the eminent domain and property acquisition process of her corporation.

#### ***Involvement of Property Owners in the Housing Authority Condemnation Appraisal Process***

Ms. Karen Wilds and Mr. John P. Baker, executive directors respectively of the Newport News and Roanoke redevelopment and housing authorities, next reported on a voluntary initiative of the Virginia Association of Housing and Community Development Officials (VAHCDO), in which housing authorities exercising eminent domain will work together with owners of property to be acquired to select a real property appraiser satisfactory to both the condemning authority and the property owner. The initiative was generated by Work Group discussion relating to the appraisal process at the previous Work Group meeting. Among the VAHCDO member authorities working together to improve the appraisal process are four of the five largest authorities in Virginia handling the vast majority of property acquisitions.

#### ***Five-Year Termination of Possible Property Acquisitions***

The Commission Executive Director presented draft legislation designed to respond to the specific mandate of Delegate Drake’s study resolution: to lift the cloud of uncertainty from over property owners long ago notified that their property might at some future date be acquired by a local housing authority for redevelopment purposes. Such property owners are effectively precluded from refinancing, cashing out equity (even for property rehabilitation or improvement), or selling their property. They are, in essence, “held hostage” to the condemning authority.

While in the initial stages of the study there was speculation that such situations might exist across the Commonwealth, it was subsequently determined following reports of local housing authority directors at the Work Group’s first two meetings that only the Roanoke and Norfolk authorities had ongoing long-term redevelopment plans involving residential property. The Roanoke 25-year plan in question expired September 1, 2001, leaving only the Norfolk Ocean View plan on the books. Accordingly, following deliberations in response to the proposal of the Executive Director, the Work Group unanimously recommended the following draft legislation designed to amend *Code of Virginia* Section 36-27 (relating to eminent domain powers of housing authorities) and provide Norfolk a five-year window to focus its resources and lift the cloud of uncertainty that already has hung over a number of its Ocean View property owners since 1989:

§36-27.2 Notwithstanding the provisions of §36-27, no housing authority transacting business and exercising powers as provided in §36-4 in the city of Norfolk shall be authorized after July 1, 2007, to acquire by the exercise of the power of

eminent domain any real property located within the boundaries set forth in the Conservation and Redevelopment Plan for the East Ocean View Conservation and Redevelopment Project adopted July, 1989, as amended by Amendment No. 1 to such Plan adopted September, 1992. The provisions of this section shall not apply to any such real property for which an offer has been made by the authority or for which the authority has initiated condemnation proceedings prior to July 1, 2007.

#### ***Non-Binding, Pre-Trial Settlement Conference***

Responding to suggestions that the condemnation appraisal and acquisition process needs improvement, the Work Group discussed the desirability of mandating pre-trial, non-binding mediation when requested by the condemning authority (whether a housing authority, VDOT, a public utility, or other entity with condemning authority) or a property owner whose property is being acquired by such condemning authority. Work Group members agreed that such pre-trial settlement efforts could serve the interests of both parties by bringing them closer together on the terms of acquisition and avoid litigation that is costly to the parties as well as to the court system adjudicating the action. It was suggested by several Work Group members that while trial costs for a court hearing an eminent domain case can exceed \$1,000 per day, the cost of mediation generally averages about \$200 per day. Accordingly, the Work Group unanimously recommended draft legislation that would build on the Housing Commission's 2000 recommendation, subsequently adopted by the 2001 General Assembly, requiring pre-trial, non-binding mediation before a neutral third party where requested by either a condemning housing authority or a property owner whose property is being acquired by such housing authority. Such 2001 statutory language, relating only to housing authorities, would be stricken and *Code of Virginia* Section 25-46.17 (relating to condemning authorities in general) would be amended by adding the following language:

The property owner or the condemning authority in any condemnation proceeding may request and the court shall order a pre-trial settlement conference to be conducted by the court. Such conference may be requested at any time by either the property owner or the condemning authority but, if requested, shall be held not sooner than 30 days prior to trial whereupon the court shall order both parties to appear with counsel and the parties shall appear with settlement authority. All settlement conferences conducted pursuant to this provision shall be non-binding. In the event settlement is not reached the matter shall proceed to trial as set upon the docket.

#### ***Reimbursement of Certain Litigation Expenses***

Responding to discussions at previous Work Group meetings, Ms. Nancy McCord presented proposed draft language relating to reimbursement of certain litigation expenses, for which language consensus had been reached among several Work Group members. Specifically, Ms. McCord proposed that, where the final judgment or settlement, relating to the value of the property to be acquired and/or damage to the remainder of such property, exceeds by at least 25 percent the first written offer of the condemning authority, such authority shall be required to pay attorney's fees as well as all reasonable costs incurred in the defense of the circuit court proceedings, including, but not limited to, reasonable fees of accountants, appraisers, or other experts necessary to establish the value of the property to be acquired and compensable business damages, if any.

The point was repeatedly made by advocates for property owners that, where owners resort to litigation to resolve a price offer by a condemning authority, and where the court

awards an offer substantially greater than that made by the authority, the plaintiff property owner still suffers a loss on the value of the property given fees of accountants, appraisers, attorneys, and other experts incurred by the owner in building the case for the value of the property. In other words, it was suggested, the value of the property should not be that awarded by the court less fees of experts. It was also noted that, despite the fact that redevelopment projects, new roads, and enhanced utility power capacity may exist for the common good, it is neither right nor equitable to balance that good on the backs of a few Virginians whose property happens to sit in the path of such projects.

Work Group members unanimously agreed to the value of further discussion on the subject but concern was expressed that interested parties were not adequately represented at the discussion table. Accordingly, the Work Group unanimously recommended that the Housing Commission Eminent Domain study be continued in 2002, with a focus on the issue of reimbursement of certain litigation expenses.

#### ***Virginia Eminent Domain Statutes Scheduled To Sunset July 1, 2002***

As requested at the previous Work Group meeting, Mr. Paul Terpak reviewed *Code of Virginia* statutes, relating to eminent domain and scheduled to sunset July 1, 2002, as follows.

- Language in *Code* Section 25-46.5, requiring that, as part of its bona fide effort to acquire property by purchase, a condemning authority provide to the property owner a copy of the property appraisal on which the price offer is based, would sunset.
- Language in *Code* Section 25-46.9, providing for election of either appointment of commissioners or empanelment of a jury in a condemnation proceeding for determination of just compensation, would sunset. Procedural language relating to Section 25-46.9 also exists and would sunset in Sections 25-46.17, .19-.22, .24, .25, and .29.
- *Code* Section 25-46.32, providing that the court may tax (i.e., assess) the condemning authority for the cost of a property survey, with such fee not to exceed \$1,000, would sunset and new language would provide that such fee is not to exceed \$100.
- Language in *Code* Section 33.1-89, requiring that the price offer made by VDOT for property to be acquired not be less than the amount of the approved appraisal of the fair market value of such property, would sunset. Second, language in Section 33.1-89, requiring that the basis for such price offer be prepared by a licensed real estate appraiser, would sunset. Third, language in Section 33.1-89, requiring that VDOT provide to the property owner a copy of any title report prepared in connection with the property acquisition, would sunset.

Work Group members unanimously recommended the removal of sunset provisions for all of the above-referenced *Code of Virginia* statutes or applicable sunset provisions or subsections thereof.

#### **RECOMMENDATION**

The Virginia Housing Study Commission unanimously adopted all recommendations of its Eminent Domain Work Group.

# NEW BUILDING PRODUCTS

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## ISSUE

House Joint Resolution 620, chief patroned by Delegate Thelma Drake, was incorporated into and passed as part of Senate Joint Resolution 446, chief patroned by Senator Mary Margaret Whipple. HJR 620 requests the Virginia Housing Study Commission to study the feasibility and desirability of requiring warranties or other forms of insurance on new building products introduced into the housing construction market. In conducting the study, the Commission is requested to identify and examine strategies, including but not limited to home warranty insurance plans, bonding by the product manufacturer, and recovery funds, to protect Virginia consumers from incurring the full costs of defective building products. Commission Chairman Senator Bill Mims requested Delegate Donald L. Williams to chair the Commission HJR 620 Work Group, to which he also appointed representatives of the homebuilding design and construction, realty, insurance, and manufacturing industries, consumer advocates, building officials, and key Virginia state agencies, including the Department of Housing and Community Development (DHCD), Department of Professional and Occupational Regulation (DPOR), and State Corporation Commission (SCC).

## BACKGROUND

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Over the last two decades, many new and innovative building products have been introduced into housing construction. While most have proved durable and cost-effective, some have fallen short of their promised benefits. In this latter group are certain formulations of such products as fire retardant-treated (FRT) plywood, polybutelene pipe, and "synthetic stucco," or exterior insulation and finishing system (EIFS). The failure of certain formulations of these products has resulted in multi-millions of dollars in damages paid for repairs and/or replacements by individual homeowners and/or their homeowners' associations. Potential financial recovery by homeowners in Virginia and nationwide is complicated by the fact that product manufacturers blame builders for improper installation, builders blame manufacturers for product defects, and the homeowner is blamed by both manufacturer and builder for improper maintenance.

In addition, the relatively humid climate in most regions of Virginia, plus saltwater-related moisture in her more coastal regions, tend to exacerbate rot and decay, and subsequent mold and insect infestation, as seen in the case of FRT plywood and EIFS. However, even as the climate and geography of the Commonwealth set the stage for failure of certain product formulations, consumers suggest, Virginia statutes hamper or all but prohibit their recovery of expenses incurred due to home damages not unrelated to that climate and geography.

## WORK GROUP DELIBERATIONS

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Delegate Williams convened two meetings of the HJR 620 Work Group. At the first meeting, Colonel (Ret'd) Lee Starkey provided members his perspective, as a result of extensive EIFS-related damages suffered by his family and other members of his homeowners association. Colonel Starkey indicated that, in his situation, there has been a complete failure of industry and government safeguards to protect him from or compensate him for the EIFS-related rotted studs and ensuing termite infestation and interior mold formations in his home. He and fellow homeowner association members are now in litigation seeking compensation for their losses.

In perspective, various members pointed out, Colonel Starkey's situation is not unique. In Fairfax alone, a recent *Washington Post* article states, it is estimated that there are some 4,000 homes with EIFS. Whether or not problems with EIFS will develop (or have already developed) in these homes is unclear. However, the Director of Legal Research for the National Association of Homebuilders (NAHB) advised the Commission Executive Director that, while he is unaware of any jurisdictions requiring warranties for new products, the NAHB is tracking the issue of problems with new products closely and has established a committee to "stay ahead of the curve" on such matters.

Following Colonel Starkey's report, Mr. Jack A. Proctor, DHCD Deputy Director for Building Regulation, provided Work Group members an overview of recent problematic formulations of new building products, as well as home foundation failures associated with expansive ("shrink/swell") soils, and the responses of the Commonwealth (including the Housing Commission) to the same. Mr. Proctor also provided an overview of applicable *Code of Virginia* statutes and Virginia Uniform Statewide Building Code (USBC) provisions on point. Mr. Proctor stressed that the USBC is promulgated to ensure a balance between building cost and safety and pointed out that the state must rely on local building officials to ensure that the USBC works to ensure building safety and related consumer protection.

Work Group members also received an overview from SCC Bureau of Insurance officials Ms. Mary M. Bannister, Deputy Insurance Commissioner, and Ms. Rebecca E. Nichols, Principal Insurance Market Examiner, of insurance products and warranty programs relating to new building products in the Commonwealth. Focusing on situations involving property damage resulting from product failure or improper workmanship, Ms. Bannister and Ms. Nichols discussed general liability insurance coverage available to manufacturers, distributors, or contractors, property insurance coverage available to homeowners, and home warranty insurance coverage available for residential property, as well as "causes of loss" and "exclusions" provisions commonly found in such policies. In response to queries, the Virginia DPOR Director advised Work Group members that the Commonwealth does not require that building contractors carry insurance.

The final speaker at the first Work Group meeting was Ms. Patricia S. Cook, Director of the Mid-Atlantic Insurance Corporation, the home warranty program of the Tidewater Builders Association. Ms. Cook noted that the program does not address product-related problems, and that builders must qualify to enroll in the program.

At the second meeting of the Work Group, members met by conference call with two attorneys representing consumers aggrieved by EIFS-related home damage. Attorneys participating in the call were Gary W. Jackson, Esquire, a member of the firm of Lewis & Roberts in Raleigh, North Carolina, and Paul E. Thomas, Esquire, a member of the firm of Smink, Thomas & Associates in Virginia Beach. Messrs. Jackson and Thomas compared the Virginia and North Carolina statutes relating to consumer recovery for EIFS-related damages, and suggested several changes to Virginia codified law that would, at a minimum, permit claimants to be heard. Currently, many claimants are effectively barred from even a hearing due to Virginia's statutes of limitations and statutes of repose. Messrs. Jackson and Thomas also recommended changing current Virginia law that recognizes the incorporation of "goods" into the building structure once such goods are installed therein. (North Carolina case law recognizes separation of the same.)

Two NAHB representatives, Mr. Jeffrey Inks, Director of the NAHB Construction Codes and Standards Department, and Thomas Ward, Esquire, an NAHB attorney, also participated in the conference call. They began by stating that NAHB would be supportive of Virginia legislation that allowed consumers additional recourse against manufacturers

for product-related damages. In addition, they described the comprehensive testing process that is utilized prior to the introduction of new building products into the marketplace.

Work Group members discussed at length the system of checks and balances that exists and, theoretically, should protect consumers against costly damages such as those related to some EIFS formulations. It was noted, however, that a time gap exists between the point at which problems may present and the point at which the statutes of limitations or repose bar claims for such problems.

## **RECOMMENDATION**

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Given the complexity of the study and its myriad issues, the Work Group unanimously recommended continuing the study in 2002. Issues identified for discussion and review include the following:

- private building inspectors independent of, but in addition to, the current local government building officials system
- Virginia Uniform Commercial Code amendments separating goods from the structures in which they are incorporated
- required insurance for builders
- required disclosure to homebuyers of the presence of EIFS in a home
- additional consumer protections under homeowner warranty programs
- changes to certain Virginia statutes of limitation and statutes of repose
- issues relating to damages recovery by homeowners living in communities governed by community associations, and particularly in situations where the exterior of individual homes is controlled by the association
- identification of potential product durability by region, particularly where special wind zones may correspond to weather-related durability
- additional authority for the Board of Housing and Community Development to address building products, or formulations of certain such products, identified as problematic.

The Virginia Housing Study Commission, in turn, unanimously adopted the recommendation of its Work Group.

# MANUFACTURED HOUSING AND AFFORDABLE HOUSING NEEDS

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## ISSUE

Senate Joint Resolution 437 (Manufactured Housing and Affordable Housing Needs), chief patroned by Senator John Watkins, was incorporated into and passed as part of Senate Joint Resolution 446, chief patroned by Senator Mary Margaret Whipple. SJR 437 requests the Virginia Housing Study Commission to study the impact of new home building technologies and current building code inspection systems on the availability of affordable housing.

Commission Chairman Senator Bill Mims requested Senator Martin E. Williams to chair the Commission Work Group addressing the issue. Senator Mims also appointed to the Work Group representatives of the manufactured housing and realty industries, local governments, and the Virginia Department of Housing and Community Development (DHCD), which agency is home to the Virginia Manufactured Housing Board.

## BACKGROUND

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Although the terms “mobile homes,” “manufactured housing,” and “modular housing” are sometimes used interchangeably, such usage can lead to confusion and is not necessarily accurate. Mobile homes are not mobile, except when they are transported to or from a location. Manufactured housing, like mobile homes, is manufactured in factories and is designed, constructed, and inspected to meet national building code standards developed and promulgated by the U. S. Department of Housing and Urban Development (HUD).

Increasingly, manufactured homes in the Commonwealth are “multi-section” units. According to the Virginia Manufactured and Modular Housing Association (VAMMHA), 65 percent of all manufactured homes now sold are double- or triple-section units. Both multi-section and single-section homes are allowed by Virginia law in all agricultural zoning districts in which single family dwellings are permitted. The *Code of Virginia* does not require that any manufactured homes, whether multi- or single-section, be permitted in any other zoning districts. No Virginia localities treat multi-sections as single family dwellings. Although very few localities allow multi-sections in any residential zoning districts, those that do allow them require special use permits.

Modular housing is also factory-built. However, like site-built housing, it must be designed, built, and inspected to meet the Virginia Uniform Statewide Building Code (USBC). (For USBC purposes, modular homes are referred to as “industrialized buildings.”) The provisions of the USBC and the HUD national building code are generally considered to be comparable. Like manufactured homes, modular homes are constructed entirely in factories. All modular homes, however, are built as multi-sections. Also like manufactured housing, they frequently are built with steel I-beams integrated into the floor structure, and arrive at the building site on wheels and axles like a manufactured home. They can also arrive on a flatbed truck. Modular homes are considered to be single family dwellings under local zoning ordinances, and are permitted anywhere a site-built home is permitted.

For purposes of taxation, the *Code of Virginia* has required since 1994 that manufactured homes be taxed and assessed as real property — as modular and site-built homes are. Anecdotally, however, it appears that certain Virginia jurisdictions continue to tax manufactured homes as tangible personal property. Real property is generally assumed to appreciate in value while taxable personal property is often assumed to depreciate in value.

Assessments of manufactured homes and their taxation as real property could prove helpful in determining their actual appreciation or depreciation and, accordingly, the role they play in "paying their way" for local services.

## **MANUFACTURED HOMES AND HOUSING AFFORDABILITY**

Recent U. S. Census data indicates that 37 percent of Virginia households have less than \$35,000 in annual income. For these households, manufactured homes, with their per-unit price of under \$60,000 for a three bedroom unit, may be the only real opportunity for safe, sound affordable homeownership. More fundamentally, it may be their only option for such housing. *Perceptions of Manufactured Housing in Virginia*, a report published in December 2000 by Virginia Agricultural Experiment Station of Virginia Tech, notes: "...the bulk of the demand for manufactured housing comes from low-to-moderate-income families who are otherwise a close cross-section of households in Virginia in terms of age, household size, family type, and mobility." The report, edited by Virginia Tech Professors Dr. Julia Beamish and Dr. Rosemary Goss, and with an introduction by Virginia Tech Professor and Director of the Virginia Center for Housing Research Dr. C. Theodore Koebel, notes:

- Affordable housing has continued to be an important concern for Virginians throughout the 1990s. Although the decade has experienced sustained economic growth, many families still struggle to afford safe and decent housing.
- Manufactured homes are highly affordable alternatives to both site-built single family houses and apartments.
- Local zoning regulations have been the greatest constraint to manufactured housing's ability to accommodate affordable housing needs in many communities.
- Policy makers should look toward integrating the manufactured product line into the mainstream of America's housing, rather than impeding the progress of the industry toward a more acceptable and highly affordable housing choice.

## **WORK GROUP DELIBERATIONS**

Senator Williams convened two meetings of the Work Group. At the first meeting, Mr. Curtis McIver, DHCD State Building Code Administrator, presented an overview of the administration and enforcement of sections of building codes relating to manufactured, modular, and site-built housing. Mr. Ron Dunlap, President, Virginia Manufactured and Modular Housing Association, presented the position paper of the Association pursuant to the study. The Association proposed that multi-section manufactured homes that 1) are new, 2) have masonry skirting, 3) are located on individual lots (not in manufactured home parks), and 4) have permanent foundations should be considered single family dwellings for zoning purposes and allowed by right in residential districts where modular and site-built homes are allowed by right.

Mr. Chris Stinebert, President of the Washington, D. C.-based Manufactured Housing Institute, reported on the federal Manufactured Housing Improvement Act of 2000 and zoning approaches to manufactured housing in other jurisdictions. Mr. Stinebert noted that sixteen states have passed legislation prohibiting zoning discrimination against manufactured housing if such housing meets the same zoning requirements as other housing permitted in the respective zoning district. Also of particular interest, Mr. Stinebert noted that homeowner equity in a manufactured home accrues at a rate parallel to equity accrued in a similarly-situated, site-built home.



Following the presentations, Work Group members participated in a site visit to a manufactured home dealership in Ashland. Three homes, varying in cost from \$59,000 for a three-bedroom, 1,600 square foot unit, to \$74,000 for a 1,900 square foot, four-bedroom unit, were toured.

At the second Work Group meeting, Mr. James D. Campbell, Executive Director, Virginia Association of Counties (VACO), presented the VACO position paper on point. Mr. Campbell stated that VACO had formally adopted a legislative position opposing "any further dilution of the zoning and land use authority of local governments as it pertains to manufactured housing." Mr. Campbell and certain Work Group members representing local governments argued that locally adopted land use and zoning plans should serve as the basis for determining the best locations for a variety of housing stock. Noting that many local governments seek to preserve "similar and traditional neighborhoods of residential communities to keep property values consistent, stable and maintain aesthetic features," they suggested that a "cookie-cutter" approach to all communities in the Commonwealth "will not work."

Following Mr. Campbell's presentation and subsequent discussion by Work Group members, Senator Williams called on Mr. Robert Ruais, President, The Manufactured Housing Communities of Virginia, to review New Hampshire statutes on point relating to taxation and titling of manufactured housing as a possible model for possible Virginia legislation. Mr. Ruais recommended that, after a review of such statutes (which were disseminated to Work Group members) and further reflection as to the complexity of the issues, and after consulting with counsel to the Virginia Manufactured and Modular Housing Association, no action on taxation and titling of manufactured housing should take place until the issues had received adequate study. Accordingly, and with consensus from the Work Group, Senator Williams recommended that such issues be deferred for study in 2002.

Mr. Dunlap then presented draft legislation proposed by his Association, which reflected the position presented at the first meeting. Lengthy discussion followed, with local government representatives generally opposing by-right placement of new, masonry-skirted, manufactured homes on permanent foundations on individual lots in areas zoned for single family dwellings.

In addition to the point made by Mr. Campbell and local government officials during initial discussions that localities should not be deprived of their right to make local land use decisions, local government representatives also argued against Mr. Dunlap's proposal on the following grounds:

- The position of the manufactured housing industry is contradictory. The industry contends that manufactured homes are the equivalent of site-built homes, despite the fact that modular and site-built homes are built to Uniform Statewide Building Code standards while manufactured homes are built to U.S. Department of Housing and Urban Development standards. The industry contends that it is "not feasible" to manufacture housing for single-family residential zoning districts despite the fact that "mobile homes are built on the same factory floor as modular housing."
- Given the cost of lots and set-up costs in addition to the cost of a manufactured home, manufactured homes may not be an affordable housing solution.
- The draft legislation is being proposed without adequate study of structural, installation, and durability problems associated with manufactured housing.
- Manufactured homes are fundamentally different from site-built homes (i.e., they are "mobile" and built to different standards than modular or site-built homes).

Therefore, there is justification for flexibility for local government in zoning and land use decisions relating to manufactured homes.

- Manufactured housing has a disproportionate negative fiscal impact on localities.

Arguing the facts, Mr. Dunlap and various Work Group members vigorously rebutted the arguments of local governments.

## **RECOMMENDATION**

On a vote of 8-3, the Work Group recommended the draft *Code of Virginia* amendment that follows. Section 15.2-2290.1 Certain Manufactured Homes Deemed Same as Site-Built Homes.

- A. Notwithstanding the provisions of Section 15.2-2290, localities adopting and enforcing zoning ordinances under the provisions of this article shall provide that any new, multi-sectioned manufactured home with a minimum width of 24 feet, with a minimum 5/12 roof pitch, on an individual lot, and on a permanent foundation with masonry skirting, shall be defined in all such zoning ordinances as a single family dwelling, and shall be permitted in any residential zoning district that permits single family dwellings constructed to the Uniform Statewide Building Code, subject to the same zoning regulatory standards applicable to a site-built single family dwelling within the same or equivalent zoning districts. Such regulatory standards shall not have the effect of excluding manufactured housing.
- B. Local zoning ordinances adopting provisions consistent with this section shall not relieve lots or parcels from those obligations relating to manufactured housing units imposed by the terms of a restrictive covenant.

Work Group members also considered whether *Code of Virginia* Section 55-290, which currently provides for by-right placement of manufactured homes in agricultural districts, should be amended to limit such by-right placement to new, masonry-skirted homes on permanent foundations. Noting that such amendment would effectively curtail resale of previously-owned manufactured homes, on a vote of 9-4 the Work Group opposed such proposal.

During the deliberations involving the full Virginia Housing Study Commission, Senator Mims recommended that manufactured homes referenced in the above language must be a minimum of 24 feet in width. Accordingly, Senator Mims' recommendation was incorporated into and made a part of the recommended language, which was then unanimously adopted by the Commission.

# HOMEOWNERSHIP OPPORTUNITIES FOR MINORITIES AND NEW IMMIGRANTS

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## ISSUE

Senate Joint Resolution 446, chief patroned by Senator Mary Margaret Whipple, continues the study initiated by the Virginia Housing Study Commission in 2000 to foster homeownership opportunities in the Commonwealth for minorities and new immigrants. The study is undertaken with the assistance of the Virginia Housing Development Authority. Commission Chairman Senator Bill Mims requested Senator Whipple to chair the Commission Homeownership Opportunities Work Group, to which he also appointed representatives of the mortgage lending and banking, realty, and homebuilding industries, the secondary mortgage market, local governments, nonprofit housing developers, and consumer and fair housing advocacy organizations. Senator Whipple convened three meetings of the Work Group.

## MARKET CHANGES AND LENDING CLIMATE

Since the initial study resolution was introduced in January 2000, positive market changes and the lending climate have changed significantly to foster homeownership opportunities. Interest rates are down, Fannie Mae and Freddie Mac have introduced aggressive lending products, and VHDA has introduced seven new programs, several in response to the discussions of the Work Group last year. Further, an additional \$45 million is available through VHDA in the coming year as a result of the increase in the mortgage revenue bond cap. In addition, the Congressional Black Caucus and private sector housing partners, including realtors and many leading financial institutions, have publicly stated the need and their plans to increase homeownership opportunities for minorities and new immigrants.

## STUDY PROCEDURE

Senator Whipple convened three meetings of the Work Group. At the first meeting, VHDA Single Family Division Assistant Director Michele Watson briefed members on the Authority's seven new lending products designed to foster additional homeownership opportunities. The meeting discussion focused largely on these products and other potential VHDA initiatives to increase homeownership.

Following the meeting, Senator Whipple appointed a six-member Task Force to recommend to the Work Group overall study goals and specific study issues. In preparation for the Task Force meeting, VHDA Single Family division staff and the Commission Executive Director met several times to review issues raised by last year's Commission Work Group on Homeownership as well as the recommendations published in the National Housing Conference 2000 report, *Expanding The Dream of Homeownership*. Those recommendations were reported to the Task Force, and following discussion, the Task Force identified study goals and recommendations for meeting those goals.

## STUDY GOALS AND WORK GROUP FOCUS

Following a report from its Task Force, the Work Group at its second meeting adopted the Task Force Recommendations. Mindful of the market changes previously noted, the Work Group agreed that study efforts should focus not necessarily on national policy, but on meaningful goals achievable in the Commonwealth. Those goals are:

- foster additional partnerships
- encourage increased private sector participation
- encourage increased local government participation
- identify model programs that can be replicated in localities and regions across the Commonwealth
- identify additional financing mechanisms.

Accordingly, the Work Group focused on the following:

- local government partnerships
- differences between predatory and subprime lending, including lending practices for purchases of manufactured housing
- location-efficient mortgages and employer-assisted homeownership
- opportunities for utilizing the structure of community associations, including condominiums and cooperatives.

### **WORK GROUP DELIBERATIONS**

To set the Task Force recommendations quickly in motion, the Work Group was expanded to include additional private sector and local government participants. Further, Ms. Watson and the Commission Executive Director placed three recommended study issues on the agenda for the second meeting of the Work Group. Lucia Anna Trigiani, Esquire, a member of the law firm of Troutman Sanders, and Mr. Ronald P. Kirby, President of Community Management Corporation in Fairfax, provided a primer on community associations in the Commonwealth, including related demographic and historical overviews, anticipated trends, partnership opportunities with local governments for work-outs of fiscally troubled developments, and opportunities presented by association-governed developments for affordable homeownership.

Following the presentations by Ms. Trigiani and Mr. Kirby, Mr. David Jeffers, Director of the Fannie Mae Northern Virginia Partnership Office, provided Work Group members a report on Fannie Mae's location-efficient mortgage program and employer-assisted housing program. He announced that the Northern Virginia Office will be home to one of only a few Fannie Mae location-efficient mortgage pilots in the nation. In addition, he stressed his desire to work with the housing industry in Virginia to foster homeownership opportunities statewide. The presentations by Ms. Trigiani, Mr. Kirby, and Mr. Jeffers sparked vibrant discussion.

At their third meeting, Work Group members focused on predatory and subprime lending, individual development accounts, and changing demographics among Virginia residents and homeowners. J. Page Wittkamp, Esquire, Suntrust Mortgage Corporation Senior Vice President and Senior Counsel, Ms. Constance Chamberlin, Executive Director of Housing Opportunities Made Equal (HOME), headquartered in Richmond, Ms. Janneke Ratcliffe, Secondary Markets Program Director of the nonprofit Self-Help, headquartered in Durham, North Carolina, and Mr. Steven P. Hornburg, then Executive Director of the Mortgage Bankers' Association Research Institute for Housing America, participated in the lending panel.

Ms. Shea Hollifield, Deputy Director of the Virginia Department of Housing and Community Development, reported on Virginia's pilot Individual Development Accounts (IDAs) program and the role IDAs can play as an opportunity for accrual of assets that can lead to homeownership by lower-income Virginians.

The meeting's third presenter, Dr. C. Theodore Koebel, Professor and Director of the Virginia Center for Housing Research at Virginia Tech, reported on 2000 U.S. Census data specifically relating to minorities, new immigrants, and homeownership trends in the Commonwealth. The group discussion following these presentations was equally as enthusiastic as that following the presentations at the previous meetings.

#### **RECOMMENDATION**

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After receiving the Work Group report, the Virginia Housing Study Commission unanimously recommends that the Homeownership Opportunities study continue in 2002 and focus on a host of lending practices, identified during the three 2001 meetings, currently in practice in Virginia and about which concern was expressed by a number of Work Group members. Such issues include but are not limited to:

- excessive home mortgage prepayment penalties
- mandatory arbitration clauses, which preclude a court hearing
- decreasing value, high-cost, single premium life insurance policies, using funds derived from cash-outs from mortgage loan refinancing
- additional disclosures to borrowers and potential borrowers
- inability of borrowers to access certain mortgage loan pay-off amounts
- licensure of mortgage brokers.

# VIRGINIA HOUSING STUDY COMMISSION 2001 WORK GROUPS

## COMMON INTEREST

### COMMUNITY ASSOCIATIONS

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The Honorable Michele B. McQuigg  
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The Honorable Donald L. Williams  
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**<http://legis.state.va.us/vhsc/housing.htm>**