VIRGINIA HOUSING COMMISSION

2016 Annual Report

Virginia Housing Commission

Danny Marshall, Chair	House of Delegates
Mamie E. Locke, Vice-chair	Senate of Virginia
George L. Barker	Senate of Virginia
William M. Stanley	Senate of Virginia
David L. Bulova	House of Delegates
Betsy Carr	House of Delegates
Barry D. Knight	House of Delegates
Christopher K. Peace	House of Delegates
Mark K. Flynn	Governor Appointee
T.K. Somanath	Governor Appointee
Laura D. Lafayette	Governor Appointee
Elizabeth A. Palen	Executive Director

Rev. 5/25/16

Affordable Housing, Real Estate Law & Mortgages

Christopher Peace, Chair	House of Delegates
Betsy Carr	House of Delegates
Barry Knight	House of Delegates
Danny Marshall	House of Delegates
Mamie Locke	Senate of Virginia
George Barker	Senate of Virginia
Bill Stanley	Senate of Virginia
Mark Flynn	Gubernatorial Appointee
Laura Lafayette	Gubernatorial Appointee
T. K. Somanath	Gubernatorial Appointee
Neal J. Barber	Community Futures
Steve Baugher	Virginia Association Mortgage Brokers
Robert N. Bradshaw	Independent Insurance Agents of Virginia
Paul Brennan	Virginia Housing Development Authority
J. G. Carter	TowneBank Mortgage
Tyler Craddock	Virginia Association of Housing and Community Development Officials
Heather M. Crislip	President and CEO of HOME
Chip Dicks	Virginia Association of Realtors
Andrew M. Friedman	Virginia Beach Dept. of Housing & Neighborhood Preservation
Brian Gordon	Apartment & Office Building Association of Metropolitan Washington
Kelly Harris-Braxton	Virginia First Cities
Kelly King Horne	Homeward
Joe Lerch	Virginia Association of Counties
Katherine Payne	Williams Mullen
Renee Pulliam	Virginia Apartment Management Association
Jay Speer	Poverty Law Center
Elizabeth Steele	Stewart Title
Chris Thompson	Department of Housing and Community Development
Michael Toalson	Home Builders Association of Virginia
William Walton	Real Property, Inc.

Housing and Environmental Standards

Open, Chair	Senate of Virginia
George Barker	Senate of Virginia
David Bulova	House of Delegates
Betsy Carr	House of Delegates
Danny Marshall	House of Delegates
Barry Knight	House of Delegates
Mark Flynn	Gubernatorial Appointee
Brian Buniva	Environmental Health & Safety; Sequa Corporation
Ron Clements	Virginia Building & Code Officials Association
Tyler Craddock	Manufactured & Modular Housing Association
Cindy Davis	Building Codes/Dept. of Housing & Community Development
James R. Dawson	Virginia Fire Prevention Association
Chip Dicks	Virginia Association of Realtors
Michelle Gowdy	Virginia Municipal League
Joe Lerch	Virginia Association of Counties
Art Lipscomb	Independent Firefighters
Katherine Payne	Williams Mullen
Shaun Pharr	Apartment and Office Building Association
Ed Rhodes	Virginia Fire Chiefs Association
Neal Rogers	Virginia Housing Development Authority
Michael Toalson	Home Builders Association of Virginia
Cal Whitehead	Whitehead Consulting
Jerry M. Wright	Central Virginia Chapter-Community Association Institute

Common Interest Communities

David Bulova, Chair	House of Delegates
Betsy Carr	House of Delegates
Barry Knight	House of Delegates
Christopher Peace	House of Delegates
George Barker	Senate of Virginia
Laura Lafayette	Gubernatorial Appointee
Sarah Broadwater	CIC Resident
Janice Burgress	Virginia Housing Development Authority
Michelle Casciato	Community Association Institute
Tyler Craddock	Manufactured & Modular Housing Association
Chip Dicks	Virginia Association of Realtors
Chet Hahne	Virginia Association of Community Managers
Heather Gillespie	Common Interest Communities Ombudsperson
Dale Goodman	Virginia Resort Development Association
Trisha Henshaw	Community Interest Community, Executive Director
Joseph Hudgins	Independent Insurance Agents of Virginia
Mike Inman	Community Association Institute
Joe Lerch	Virginia Association of Counties
Phillip W. Richardson	Eck, Collins & Richardson
Chandler Scarborough	Green Run Homes Association
Scott Sterling	Common Interest Communities Board
Michael Toalson	Home Builders Association of Virginia
Pia Trigiana	Common Interest Communities Board
Jerry Wright	Community Association Institute

Neighborhood Transitions & Residential Land Use

Mamie Locke, Chair	Senate of Virginia
Bill Stanley	Senate of Virginia
David Bulova	House of Delegates
Betsy Carr	House of Delegates
Danny Marshall	House of Delegates
Mark Flynn	Gubernatorial Appointee
Laura Lafayette	Gubernatorial Appointee
T. K. Somanath	Gubernatorial Appointee
Neal J. Barber	Community Futures
Bernard Caton	City of Alexandria, Legislative Director
Tyler Craddock	Virginia Association of Housing and Community Development Officials
Cindy Davis	Building Codes/Dept. of Housing & Community Development
Chip Dicks	Virginia Association of Realtors
Chris Freund	Family Foundation of Virginia
Brian Gordon	Apartment & Office Building Association of Metropolitan Washington
Michelle Gowdy	Virginia Municipal League
Kelly Harris-Braxton	Virginia First Cities
John H. Jordan	Manufactured Housing Communities
Joe Lerch	Virginia Association of Counties
Barry Merchant	Virginia Housing Development Authority
A. Vaughan Poller	Hampton Roads Housing Commission
Elizabeth Rafferty	Department of Housing & Community Development
Earl Reynolds	City of Danville, Community Development Director
Michael Toalson	Home Builders Association of Virginia
Cal Whitehead	Whitehead Consulting

Short –Term Rentals Workgroup

Delegate Christopher Peace	Chair
Edward Mullen	Air B and B Corporation
David Skiles	Travel Technology Association
Erica Gordon	Hilton Worldwide
Eric Terry	Virginia Restaurant & Travel Association
Amy Hager	The Bed & Breakfast Association of Virginia
Sterling Rives	Virginia Association of Counties
Ron Rordam, Mayor of Blacksburg	Virginia Municipal League
Mark Haskins	Virginia Department of Taxation
Chip Dicks	Virginia Association of Realtors
Robert Bradshaw	Independent Insurance Agents of Virginia
Maggie Ragon, Commissioner of The Revenue	City of Staunton
Brian Gordon	Northern Virginia Apartment Building Association
Pia Trigiani	Property Owners' Association

*Additionally any VHC member who wishes to take part

Rev. 03/16

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Executive Summary

The Virginia Housing Commission, established by the Virginia General Assembly, is in its fifth decade and continues to be a relevant, productive Commission, studying and making recommendations, legislative and practical, on issues that involve all aspects of the housing industry.

Legislators met as a full Commission three times during the interim, in April, September and for the final meeting in December, to review and vote on a course of action based on workgroup reports. They also heard speakers on topics of relevance in housing, such as the economic impact of housing (see April 19, September 21), the uses of the Housing Trust Fund, homelessness, and the annual report on the use of proffers.

Workgroups, composed of legislators and stakeholders, were formed to develop solutions to housing-related issues across the Commonwealth. During the 2016 interim the Commission had workgroups address the issues of emotional support animals and fair housing and landlord tenant concerns, historic district requirements, home-based daycare in Property Owner Associations, and recordation of deeds when real estate taxes have not been paid, among many other topics.

In 2016, particular focus was given to short-term rentals, and an entire workgroup was formed to address this issue. The workgroup had members from all pertinent entities to offer input on the issue. Four lengthy meetings addressed best practices in localities, insurance questions, safety concerns, taxation, and the efforts of the Airbnb company to expand the industry.

Three pieces of legislation were endorsed by the Commission, and members of the Commission in the House and Senate will carry the bi-partisan legislation. The three bills address the following topics: Historic districts and disclosures; a pilot project for Danville involving payment of past taxes before filings real estate deeds (a section 1 bill); and procedures for determination of what constitutes an emotional support animal for the purposes of real estate rental.

The Virginia Housing Commission's director actively follows all housing legislation during the legislative session and represents the Commission during legislative meetings. Bills that are referred to the Commission determine the work plan for the following interim. Meetings of the Commission for 2017 will resume after the conclusion of the legislative session.

A number of resources are available on the Housing Commission website (http://dls.virginia.gov/commissions/vhc.htm). Summaries of all meetings are posted to the website, as are transcripts of the 2016 meetings that involve the controversial issue of short-term rental. In addition, the Housing Commission Twitter feed (@HousingVHC) provides links to current media coverage of housing-related issues.

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

AGENDA

Virginia Housing Commission
Tuesday, April 19, 2016, 2:00 PM
House Room C, GAB

I. Welcome and Discussion of Work Plan for 2016 Interim

- Delegate Danny Marshall, *Chair*

II. Virginia Housing Economic Impact and Areas Linked to Housing

- Susan Dewey, *Executive Director, VHDA*

Housing Trust Fund/Resiliency Grant

- Bill Shelton, *Director*
  Department of Housing & Community Development

Homelessness

- Pam Kestner, *Special Advisor on Families, Children and Poverty*

III. Public Comment and Adjournment

COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair
DELEGATE DANIEL MARSHALL, III, Vice-chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
Tuesday, April 19, 2016, 2:00 PM
House Room C, General Assembly Building

I. Call to Order

Delegate Danny Marshall, *Chair,* called the meeting to order at 2:00 PM.

Members in attendance: Delegate Daniel W. Marshall, III, *Chair*; Senator Mamie E. Locke, *Vice-chair*; Senator George L. Barker; Delegate David L. Bulova; Delegate Betsy Carr; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee;* T.K. Somanath, *Governor Appointee;* and Laura D. Lafayette, *Governor Appointee.*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Welcome and Discussion of Work Plan for 2016 Interim

- **Brian Gordon,** *Apartment and Office Building Association:* The Federal Fair Housing Act prevents discrimination on the basis of disability. Such discrimination includes the refusal to make reasonable accommodations. Recently, we've had issues with accommodations for no pet policies. It turns out that online one may pay a fee and receive a certificate from a doctor for an emotional support animal for whatever reason given.
    - We find this undermines the intent of the law and we ask the Housing Commission to look into this issue. Mostly this includes dogs or cats, but the definition is very broad so it includes many animals.
- **Delegate David Bulova:** Does the federal law preempt Virginia's ability to ask for a relationship with the doctor be evident?
    - **Gordon:** I don't know the answer. I know the federal law does not speak to the need for a relationship.

III. 2016 Session Bills Referred to the Housing Commission

- **Elizabeth Palen,** VHC: Bills that committees referred to the Housing Commission are assigned to the following work groups:
    - Affordable Housing, Real Estate Law, and Mortgages, chaired by Delegate Chris Peace, will look into the issue of pet accommodations that Mr. Gordon

just brought up; HB 1264, which includes real estate disclosures; and SJ 89, which is the impact of joint residency on landlords.

- Common Interest Communities, chaired by Delegate Bulova, will look into SB 228, which relates to home-based day cares; HB 548 and HB 710, which consider whether property owner associations should conform their fees for disclosure packets and cap those fees similar to the condo act; and SJ 80 which considers the historic properties lock located in a homeowners association, i.e., should there be mandatory disclosure of pertinent information.
- Housing and Environmental Standards, will look into SJ 87, which deals with recycling programs for multifamily residential dwellings; the building code issue regarding ground cover; and the question of bug infestation in adjoining homes.
- Neighborhood Transitions and Residential Land Use, chaired by Senator Locke, will look into the issue of clerks not recording deeds and liens if taxes are owed on them and the affordable housing aspect of SB 426, which creates the Virginia Community Impact Authority and Fund.
- In addition, the Short-Term Rental Work Group will conduct its study.

IV. Virginia Housing Economic Impact and Areas Linked to Housing

- **Susan Dewey,** Executive Director, VHDA: Executive Order 32 (2014), Advancing Virginia's Housing Policy, was issued in October 2014 and came to the Housing Commission in December 2014. The executive order discussed fostering access to economic opportunity, homelessness, and advancing progress in special needs. We kicked this off with a housing policy advisory council. Economic development should be looked at in the context of housing. We went to the state universities, who worked together to study this issue. The first phase is the economic impact assessment. The second phase is looking into other housing-related policies.
    - The Housing Policy Advisory Council also looks into some of these issues directly. We look into linkages, such as housing and economic opportunity or housing and education.

V. Housing Trust Fund/Resiliency Grant

- **Bill Shelton,** Director, Department of Housing & Community Development: We've been working diligently to try to make the Virginia Housing Trust Fund more robust in Virginia. The decision was made to include competitive loan pool, a grant section, and a comprehensive neighborhood revitalization pilot in the fund. Demand is very high for these funds.
    - The Virginia Center for Housing Research at Virginia Tech studied the impact of the 2013-2014 Housing Trust Fund allocation and found it had a major positive impact on the state economy.
    - This session we were unsuccessful at passing a dedicated revenue stream for the trust fund. The budget allocates $5.5M each year of the biennium.

- Looking at the intersection of homelessness and underperforming schools is something we are concerned with.

- **Delegate Peace:** I would be interested in a dynamic analysis of how we could save localities money with the McKinneyVeneto requirements.
  - **Shelton:** There are two definitions of homelessness. One is the HUD definition where someone does not have a home. The second in the Department of Education definition that says if a student loses their residence but living with a relative. There is a requirement for the school to find transportation for the child.
- **Shelton:** The National Housing Trust Fund is estimated at $3.2 million and is available in Summer 2016. It targets affordable housing and permanent supportive housing. It can be used to align with the DOJ Settlement Agreement.
  - Virginia Disaster Recovery Program received $125 million from HUD to address recurrent flooding and sea level rise in Norfolk. There is an additional $150 million made available from local funding.
- **Delegate Barry Knight:** You mentioned local funding, where is that coming from?
  - **Shelton:** Transportation realignments, federal funds in anticipation of other federal housing money, other state leverage.
- **Shelton:** As part of this project, there was a regional in scope project, which is a Resilience Lab and Accelerator, that should generate economic growth from water management innovation.
- **Delegate Danny Marshall:** Is the regional lab under someone?
  - **Shelton:** The structure of that is yet to be determined.
- **Laura Lafayette,** *Governor Appointee:* Regarding the revitalization pilot, there will be three recipients of loan money not grants?
  - **Shelton:** It will be a combination.
- **Lafayette:** You mentioned combining some of these applications. How will you determine who gets national or state trust fund moneys?
  - **Shelton:** We will perhaps do two rounds and put the resources available towards what projects fit best. We don't want to over subsidize.
- **Marshall:** Does loan payback go back into the trust fund?
  - **Shelton:** Yes. By legislation, it is a nonreverting fund.

VI. Homelessness

- **Pam Kestner,** *Special Advisor on Families, Children and Poverty:* Part of the executive order (EO 32, 2014) is to prioritize the most urgent areas of housing and homeless program needs. Five strategies were identified to address homelessness: (i) increase the number of permanent supportive housing units.; (ii) increase flexibility of funding to support Rapid Re-housing.; (iii) increase statewide data collection and system

coordination; (iv) increase access to substance abuse and mental health treatment; and (v) improve discharge policies and procedures for foster care, hospitals, mental health facilities, and correctional facilities.

- **Marshall:** Regarding Rapid Re-housing, you have an inventory of housing?
    - **Kestner:** Correct. This relatively new strategy is to have the needs identified and then housing provided as quickly as possible. We got rid of the transitional stage at a shelter.
- **Marshall:** So developers give you an inventory and they constantly update that and that's what you use?
    - **Kestner:** Correct.
- **Marshall:** What localities have implemented this?
    - **Kestner:** All across Virginia.
- **Marshall:** How do you know if it's quality housing?
    - **Kestner:** Through our partners that assess the housing units. It is a continual challenge.
    - **Lafayette:** If they're utilizing vouchers, there will be inspections.
- **Marshall:** Do you even move homeless people from one community to another if you don't have housing stock in one area?
    - **Kestner:** One of our goals is to have the communities be able to talk to each other. I'm sure it does happen in close proximity.
- **Kestner:** The last two years we have had a laser focus on several areas: ending veteran homelessness, preventing and ending youth homelessness, housing and healthcare, criminal justice and homelessness systems summit.
    - Between 2010 and 2015, we have reduced homelessness by 23%.
- **Senator George Barker:** Are these people that Virginia placed or were some of them placed themselves?
    - **Kestner:** Primarily it's those placed through the Homeless Service System. These numbers are an annual count that occurs across the country.
- **Bulova:** What does the number look like to functionally end homelessness in Virginia?
    - **Kestner:** We would need additional resources to functionally end homelessness.
- **Peace:** Do you have a definition of what a home means?
    - **Kestner:** It's a place where people have their own space. It's safe and meets people's needs. It means different things to different people.
- **Peace:** How does your office look into situations where motels are used as homes? Regarding the voucher program, I'm sure you have a view?

- **Kestner:** We have identified the issue of such use of motels as an issue of high interest.

- **Peace:** It might be a nice opportunity to collaborate.
- **Marshall:** Is 10% representative of the amount of veterans who are homeless?
    - **Kestner:** It's much less. I don't have that number.
- **Marshall:** Geographically I assume they are near the Norfolk/Tidewater area?
    - **Kestner:** Most are near the Tidewater area, but also in Richmond, Salem, and Northern Virginia. They tend to congregate near VA medical centers.
- **Kestner:** Regarding the DOJ settlement, it was important to work in collaboration with the following state and local partners. We created a plan to increase independent living option. The goal is to house 1,800 members of this population. To date we've housed 400. Key factors in meeting our goal is to work closely with the ID/DD population, rental assistance, and supportive services.
    - In summary, the need for housing is great and complex. We thank you for your support.
- **Lafayette:** There is a percentage of the homeless population that will always need permanent supported housing. There is a percentage that may be in and out but can live independently. Could you not extrapolate from the point-in-time surveys to get a sense of the demographics of the population?
    - **Kestner:** Its very basic information that gets collected with the point-in-time survey. We don't have a statewide system to compile the information into one report.

VII. Public Comment

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

VIII. Adjourn

- Upon hearing no request to comment, **Delegate Marshall** adjourned the meeting at 3:30 PM.

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

AGENDA

Virginia Housing Commission
Wednesday, September 21, 2016, 10:00 AM
House Room C, GAB

I. Welcome

- Delegate Danny Marshall, *Chair*

II. Virginia Housing Economic Impact Study

- Introduction & Scope
  Bill Shelton*, Director, DHCD*
- Presentation of Study
  Terry Clower*, Director, Center for Regional Analysis, George Mason University*
  Mel Jones*, Virginia Center for Housing Research at Virginia Tech*

III. Reports from Workgroups

- Delegate Christopher Peace, *Affordable Housing & Real Estate Law*
- Senator Mamie Locke, *Neighborhood Transitions/Housing and The Environment*
- Delegate David Bulova, *Common Interest Communities*

IV. Public Comment and Adjournment

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
September 21, 2016, 10:00 AM
House Room C, General Assembly Building

I. Call to Order

Delegate Danny Marshall, *Chair,* called the meeting to order at 2:00 PM.

Members in attendance: Delegate Daniel W. Marshall, III, *Chair*; Senator Mamie E. Locke, *Vice-chair*; Senator George L. Barker; Delegate David L. Bulova; Delegate Betsy B. Carr; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee;* and Laura D. Lafayette, *Governor Appointee.*

Staff: Elizabeth Palen, *Executive Director of VHC*

I. Welcome

- **Delegate Danny Marshall**, *Chair:* We thank all of you in the audience for being here this morning. We start off with someone who absolutely needs no introduction. He's here before us at least several times a year. So, Mr. Shelton, welcome, and we turn it over to you, sir.

II. Virginia Housing Economic Impact Study

- **Introduction and Scope: Bill Shelton,** *Director, DHCD*: Thank you, Mr. Chairman. Bill Shelton, Department of Housing and Community Development.
    - Just a brief introduction because we're introducing a subject that we've reported to you on before. I think you're aware that about 18 months ago, the Governor issued an executive order creating a Housing Policy Advisory Council, and we've updated you a couple of times. So what we're doing today is just giving you another update as the product now rolls out. And you'll hear that presentation here in a few minutes.

- Just to refresh your memory, the theme of this policy work group has been looking at ways—we're looking across a broader spectrum of housing issues, but focused primarily on how housing intersects with the economic development of the Commonwealth. And so looking at aspects of how housing is part of the economic stream, but also how the availability of housing affects economics and other things that go on in our communities. And so we're moving toward doing that. And there is an advisory council made up of a number of folks that are working on it.

- The study that's being done was commissioned by the Housing Policy Advisory Council. We found a great collaboration, four fine Virginia institutions of higher education that are working on this: Virginia Tech, George Mason, VCU, and William & Mary. They put the proposal together to collaborate on this, and they've been working together. You'll hear more about that in a few seconds.

- One of the first charges was, again, to assess that impact of the housing industry on the Commonwealth. And part of that premise was that, coming out of the recession, we know we have not rebounded as fast. There are lots of reasons. There are lots of things that have been looked at. But what you'll hear about today is the relative magnitude of housing as part of the overall economy of the Commonwealth and some demonstration of how it affects overall regional economic vitality, which will come in further iterations of this report as it goes forward.

- This coalition of researchers actually has it divided into what I say are two phases. Today you're going to hear the results of Phase 1 and an update on Phase 2, which will come out next spring, early summer. Phase 1 is that economic impact study. Phase 2 is how housing intersects with a number of key sectorial areas. With no particular ranking of importance, we were looking at transportation; workforce; revitalization of communities and how they develop; intersection between housing and health. We know there are some housing conditions which affect health. And perhaps one that has received a lot of attention was the intersection between housing and education, the concentrations of poverty, substandard housing conditions and the correlation with underperforming schools. We're long on the *need* side of that and haven't figured out the *solution* side, but we're looking at trying to figure out how can we respond and actually get more synergies between where the Commonwealth invests resources on a variety of these areas. An alignment, I think, is what we're trying to move toward.

- The HPAC topics, in addition to commission of the study, there are two key work groups that have been meeting and will continue to meet. One is that intersection between housing and education, which they wanted to talk about. This linkage between underperforming schools and housing. They're going to have a lot of similarities because what has risen up in that discussion is the concentrational poverty issue seems to align and correlate pretty closely with the underperforming schools. And so best strategy is the look at that, then flow into

that second area, which is looking at how housing intersects with economic stability and economic opportunity.

- So the kinds of things that get talked about are if concentrational poverty is the observed correlation, what could you really do about it, if anything? There are some tough questions to answer there. But the idea that you might invest in different ways to disperse lower-income housing, that you might have more mixed income, that you have more vibrant communities with services, and create better quality of life and neighborhoods then leads to the vitalization. There are some things I think that are built in implicitly to state policy: How you invest, where you fund, that might be thought about. So we don't have solutions yet, but they're being talked about. And there will be recommendations coming out of the housing policy work group.

- What you're going to hear about today, first, are the results of the economic impact study. It was released by the Governor by press release on September 2. You'll hear the results of the study and look a little bit at what the implications are for Virginia. We're very pleased today to have two presenters who have been working with us very closely. Terry Clower, who is with the George Mason Institute on Economic Research, will basically be giving the update on the economic impact study. And then you'll hear from Mel Jones from Virginia Tech, who's going to give you an overview of the work in progress relative to the other areas of the study that will come out more fully next year.

- I'll be happy to answer questions, but I recommend that maybe we hear from our two researchers and then maybe do it all at one time, Mr. Chairman, if that's all right.

- **Presentation of Study: Terry Clower**, *Director, Center for Regional Analysis, George Mason University*: Thank you very much. I appreciate the opportunity to talk to you folks this morning. My name is Terry Clower. I'm the director of the Center for Regional Analysis at George Mason University.

  - What we want to do today is quickly—in your package you have the slides—go through what we did, our findings, how we conducted the analysis, and then answer any questions you might have.

  - As suggested by Mr. Shelton, this is a part of an overall broader study. This is component 1, which is just starting out with this initial look and to see how important, from an economic perspective, the housing industry is in the state of Virginia and doing it by measuring some numbers. When we understand the importance, we talk about revenues, we talk about numbers of jobs, those kinds of things.

  - What we are looking at in terms of the industry—and I'll get into some details in a minute—are single-family, multifamily residential properties, both new construction, the services that go into that—architectural services, plumbing

services, real estate services, brokers, agents, financing services, household services to a certain extent. And then we're going to finish up. Just to give it a sense, we did some comparisons with other major industries in the state.

- A little bit of a primer—please, I'm not going to spend but just a moment on this—is what do we do with impact analysis. You've heard the phrase *supply chains*. And what you're doing is looking at the value of spending in an industry and how it winds up flowing through the rest of the economy. So we're thinking about if you're building houses, for example, what all goes into it. Certainly there's the labor component, there's the materials that you think about, there's consumption of energy. There is equipment that you rent or purchase to do it. And then of course a whole host of services, anywhere from transportation services—all of it combined. So you look at that spending, how it flows through the supply chain.

- And then also to capture an important piece of it that is the jobs that are created out of that and the income you created. So, if you have somebody who gets a job building a house, they go out and they spend money in the rest of the economy for goods and services. Importantly, they pay taxes. We want them to do that. And so we're actually capturing how all of that flows together.

- We wind up capturing, as I suggested, that direct effect, which is what the industry is spending, the indirect as the supply chain, and then the induced. But the importance of why I have a separate slide is that very last line that when you're doing this across multiple sectors at the same time, you want to be cautious that you don't wind up double counting. For example, the carpenter who is building the framing of the house is actually a consumer of housing themselves. So, in the modeling, you have to adjust out things where you would potentially double count the same spending because you get on both sides.

- This is an appropriately conservative way of doing an economic impact assessment. Always, if you look at an impact study, you want to make sure when there are multiple sectors involved that these kinds of adjustments are made.

- When we're doing the measurement, we're looking at four pieces of information. They are all kind of part of the same thing. The first is output. Output is simply a measure of business transaction, the value of sales, straight up. Employment is exactly that, but it is head-count employment. So, in restaurants, it's not a full-time equivalent number; it is a head-count job. Labor income is salaries, wages, benefits. Value added is equivalent to gross state product, which is that what do you add in? So it's proprietor's income, it's property income, it's operating surplus, and other issues. And of course the taxes get included in that.

- In doing this analysis, what do we count in terms of the industry? From construction, single-family, multifamily, manufactured housing, and of course remodeling. When I moved to Virginia two years ago, I had this shock coming from Texas about how much I was paying for housing in Northern Virginia to

begin with. And then we arrived, and what was the first thing we do? I was told that we would be remodeling some things. And of course I was also told that the furniture that we had just paid to move up was going to have to be replaced because it didn't fit any longer. That's one of the reasons housing is a very important part of the economy. It generates lots and lots of spending.

- On the finance side, we're talking about loan brokers, lenders. And don't worry about it, I know that there are not a lot of things called *savings banks* anymore, but we still label them as such in our industry categories. Loan servicing. Since Freddie Mac is here, we include Freddie Mac. But we're only including a relative portion of that entity. Sales brokerage, residential property management, apartment rentals, insurance.

- Within any of this, though, if you think about some of these industries, they service both in terms of residential and maybe industrial or commercial sectors. We've gone through and made adjustments based on either talking to industries or using data sources to say Out of all of the loans that are done, what portion of those are actually really residential loans? We're not talking about loans to businesses or auto loans or those kinds of things. For each of these industries, we've made those adjustments. And if you have questions about any one in particular, I can tell you what we did and how we did that.

- We also include some legal services, both in terms of you think that most title company stuff done is done now by lawyers or through law firms and support for real estate transactions. We were able to identify a piece of that. It's not a real big piece. For example in this one, based on industry surveys, we were able to determine that for non-title company types of legal services, about 2.3 percent of their total business is delivering services for residential purchase support. So we made that kind of adjustment.

- Retail, home centers. Within the home center, we counted only that part of the business that is supporting DIY because, again, we would have counted the sales to a building contractor or to a homebuilder actually in that segment of the economy. So, it would have already been counted there.

- Home furnishing, appliances. We also counted some non-governmental agencies such as VHDA. Homeowners associations, they have businesses themselves. They employ people. Keep in mind that we did not include government entities, specifically, as producers of employment for this analysis.

- And then a whole host of services. I won't go into them individually, but think about all the stuff that we consume in our households. And, again, making those adjustments. For landscaping, it wasn't landscaping at commercial buildings; it was landscaping at residential properties. Junk removal. And even a little bit, which is not a huge one anymore, but domestic staff. We're talking about maids and gardeners, that type of thing.

- We tried to be pretty comprehensive about doing that while being conservative in our approach. Now, let's get to some numbers.

- The economists love to say a billion here, a billion there, and pretty soon you're talking about some real money. Well, we're talking about almost $48 billion in economic impact in the state in the year 2015. Obviously, we're still in 2016, so we don't have full-year data. That equates to about a $23 billion contribution to gross state product. Over $14 billion in labor income. And over 300,000 jobs. For us in the Commonwealth of Virginia, we obviously need to create jobs. Yes, sir.

- **Marshall:** If I looked at the total output of that $47.8 billion, what percent of the total gross product for the state of Virginia is this? Did you look at that?

- **Clower:** I did not look at the total in that way. But what I did do here in a little bit is I compared the direct output against some other industries if you what to look at it as that piece of it, overall. Again, for any one industry, we'd never expect any given industry to represent a huge percentage, but it is an important industry the way it's broken out. And we can talk about that in just a minute. And, of course, importantly from our modeling, we're saying that in terms of state and local revenues for taxing jurisdiction, about $1.6 billion. Not everything that we're bringing in, but certainly important sources of revenue.

  - So let's think about this. To avoid the stuff about the cross-flow between different industries, just looking at the direct output, How does this compare to some of our other big sectors? I'm not going to surprise anybody here. I guess we'll call it our stunning fact of the day, which is that federal spending is still number one: about $100 billion a year. Healthcare is number two. It's something around $44 billion a year. We look at these other pieces: resale, wholesale, some non-residential construction. Non-residential construction is all the stuff that we're doing with highways, we're doing with industrial buildings, office buildings. All of that is important. But housing is running at about position number six in terms of importance. Yes, sir.

- **Marshall:** On the previous slide, you showed the output was [$]47.8 billion, and on this slide it's [$]28.1 [billion].

- **Clower:** Right. That is that difference that is the direct output only. So the difference that you have here, if you think about it, What is the multiplier? You've heard of economic multipliers. So the number where we get the $47.8 [billion] is direct/indirect effects, the supply chain effects, and induced combined. Whereas this is just looking at the direct.

- **Marshall:** Thank you. Yes.

- **Male:** Thank you very much. In terms of multipliers, I know that if you invest in certain areas of the economy, you're going to have different multipliers. How is the

multiplier for housing compared to other multipliers you have for the other big industries up there?

- **Clower:** If we were to look broadly at multipliers, this is coming in roughly at somewhere in the neighborhood of about 1.7. I'm kind of guessing; I didn't calculate it. But just doing my mental calculation, 1.7, 1.8. That falls into something of what I would expect a little bit less maybe than some manufacturing operations. Certainly probably more than what you would expect out of wholesale trade or retail trade in terms of contribution in that sense. There are certain federal procurement activities that are actually very valuable. And you get some wide extremes. But it would fall pretty much right there in the middle of all industries and maybe just a little toward the high side.

- **Marshall:** To follow up on that, what segment would be the highest and what is the highest multiplier?

- **Clower:** Within housing?

- **Marshall:** Well, no sir, in all of these.

- **Clower:** Oh, between all of these? If you promise not to record it and publish it later, I would tell you that my best guess is that defense spending in the highest in terms of multiplier. Health care services is actually pretty strong usually, but wouldn't be too much higher than what we're talking about. The construction stuff, whether it's the housing industry or non-residential, it would probably be up there. Wholesale and retail would be lower in terms of output multipliers. Transportation and warehousing is probably a little bit lower, quite frankly. Food, beverage, and product manufacturing, just in the food segment, probably about the same.

- **Marshall:** Someone who lives in a tobacco region, it's surprising that it's still even on the page.

- **Clower:** Any time that you have one of your key agricultural sectors that are popping into your top industries, I consider that both good news and news maybe to work on. Keep in mind, I was conglomerating a lot of different, very broad industries in this. But it would also tell us that we want to see more manufacturing in this state. But you know that.

- **Marshall:** Yes. Thank you.

- **Clower:** Other questions?

- **Marshall:** Thank you very much and of course there is—oh, I'm sorry. Yes sir, Delegate.

- **Delegate David Bulova:** Thank you very much. That was a very good presentation. This might be a really tough one to answer. And if you can't, just say so. I think with

almost any of those up there, in addition to direct or indirect output, you're also going to have some negative externalities that are associated with them that are actually costs. For instance, while it's not a big problem now because you're starting to see migration into the cities, housing, of course, is a factor of new people moving in and then people who are shifting from maybe more dense areas to less dense areas, in which case you have stranded infrastructure. So you have underutilized schools, underutilized roads. Did you try to look at any of those factors in here in terms of a net output as opposed to just a direct output?

- **Clower:** No, we did not. This is an economic impact analysis. If we were to think of it in terms of a cost benefit type of analysis, you'd be focusing probably pretty much just, say, on the revenue side for government revenue. But always keep in mind that sometimes what you wind up having is that opportunities get created, of what can look like a negative for a short period time can actually become your positive. So can you take these areas that are depressed and use them as a place that can be reinvigorated, gentrified, whatever phase you want to use? I like to think of the economy, particularly within the strengths that we have in the Commonwealth, that with most of our challenges, there are some ways forward.

    - If you'll just bear with me for a second. I was in the southwest last weekend. One of the things that you think about is that, Okay, there is no doubt with the struggles with coal—and some of its regulatory and a lot of it is just that natural gas is as cheap as can be. But one of their key advantages is the electric utility infrastructure that they have because of serving coal. And, of course, they've invested tobacco money into getting into the high-speed broadband network. So you're thinking about a safe place to put a data center and perhaps the most reliable electric power sources in the state because of the duplicated systems that are available in the southwest. So anytime you look at a negative, even if we're looking at housing, these present some opportunities for us to restructure and grow into the modern economy.

- **Bulova:** Thank you.

- **Marshall:** Following up on that slide that's on there now, it shows [$]20.1 billion in '15. The homebuilding world changed in about '07, '08, so the number of new starts in Virginia took this giant slide down. So do you have data showing what it would have been at like '06, '05, '04? That [$]28.1 billion—and of course inflation rates should have raised that a little bit since '07, '08. Things cost more. But do you have any data showing what it before the '08 recession?

- **Clower:** It's not included in this scope of work. But certainly there are data that we could go back and look at. We could look at it in an inflation-adjusted basis. For some of the industry breakdowns, I don't know if I'd find specific historic data about how it's separated out. But you could make some assumptions about how the structure of industry didn't change. But certainly there are data available the way we did this analysis that we could go back and look at that.

- **Marshall:** If you could do that and send it to Elizabeth, she could send it to us.

    - The other thing is what we've talked about here in this group is—if you look at interest rates on mortgages—I had a mortgage rate one time that was eight percent, and I thought I got a good deal. And now it's half that or less. So, evidently, the interest rate is not driving people to buy housing. Did you look at that at all? Why housing is not moving? Or are you just looking at the direct impact?

- **Clower:** No. This is just the numbers here. There will be other elements of what you're discussing or actually would be included as part of the broader analysis that will be coming out. It may be well into the spring by the time it's all done. I would tell you that certainly interest rates are not a barrier for doing it. But just because you can afford it doesn't mean that a loan officer is going to grant you a mortgage at this point.

    - And of course we have the psychological effect that we've been noticing, the increase of people who are renters by preference. Maybe they got burned in the downturn, and they're just not interested in owning a house again. That's a phenomenon we're seeing. And the differences of preferences in intergenerational difference. We've seen plenty of evidence that millennials are purchasing maybe a little differently than the previous generation.

- **Marshall:** And I saw, I guess it was in August that the report came out, that homeownership is at an all-time low, nationwide.

- **Clower:** I do now know about the "all-time," but it certainly has taken a dip after that. We went from about 63, 64 percent before we did the subprime lending. And when we got to subprime lending, we went up to as high as maybe close to 70 percent. And then after the bust, it's dropped back down. We have a long-run average of being a little above 60 percent. Maybe that's a market norm for us.

- **Marshall:** Hopefully not. One other request is that when you get that new data, if you could let Elizabeth know so we can invite you back.

- **Clower:** Let me be clear. We'll have to discuss with Mr. Shelton and others about the resources needed to do that additional analysis.

- **Marshall:** He's got plenty of money.

- **Clower:** Oh, does he? I am so glad to hear that, and I'll remind him of that.

- **Marshall:** Let's see if we have another question. Senator Stanley.

- **Senator William Stanley:** Mr. Chairman, thank you. Sir, I love to see that this industry is the sixth most important in leading the way. But I think you'd admit that our housing starts are down. There was a lot of new building that was going in Franklin County where I live that has kind of tailed off in a major way at Smith

Mountain Lake. We've seen a lot of developers go into other industries. We've seen a lot of carpenters being laid off.

- I like the numbers, but what can we do as a legislature to stimulate that industry? I've always learned and understood that housing leads the way to a good economy. And it is because whether the guy who makes the nail or drives the nail in, puts in the HVAC, frames the house, the real estate agent, the person that buys the house—what can we do as a legislature that is going to make this move from six to three?

- Just by way of example, I had a bill in that said if you buy housing materials those will be taxed—you won't have a sales tax. But somehow just trying to encourage remodels and new home construction and to give that industry a boost. What can we do and what piece of legislation is going to make this industry increase and put more people in houses?

- **Clower:** I appreciate the opportunity to address that. One of the things that I would do is kind of two pieces as one when we're finished with the broader state. Much of what we're doing in this study, overall, is looking at the connection between housing and economic development. How does housing relate to our ability to grow our economy? As we move forward, there are going to be some potential things emerge out of it that will help for the formulation of legislation.

  - I won't speak to the impossible. There are many different aspects of housing that we have to address. We do have folks in our communities who are under-housed in terms of the quality of housing. Is it a solution of having more money in the housing trust fund to help those and to build where the economics aren't quite supporting it? Housing also helps drive the economy, but housing is driven by the economy. For example, if we are successful with our Go Virginia initiative, and we get better at doing economic development and attracting growth to this region and growing our businesses, then that will fix some of it.

  - What we have seen in Northern Virginia, of course, with the housing market is that construction is going on again. There's a lot of construction happening, particularly in terms of multifamily. There are deliveries in multifamily units in that region that are kind of breaking records. Yet our vacancy rates are staying pretty stable. The economy up there is starting to move. We need that growth and that success to spread to other parts of the state.

- **Stanley:** I saw an earlier slide in the pre-presentation that said we need to make sure that we are creating more access to affordable rental housing or affordable housing in workforce areas. I know it wasn't on your slide; it was the gentleman before you. But how do we do that?

  - What I'm seeing, even down in my area, which is of course Southside Virginia, is that we're seeing a lot more rentals, higher rentals. Danville has done an amazing job in converting some of our tobacco warehouses into really nice loft

apartments. But those aren't always cheap. And so what I'm seeing also, too, as you mentioned earlier, a lot of the millennials are not buying; they're preferring to rent. That desire to purchase a home, which was always our desire, part of the American dream to own your own home, is kind of waning.

- One, How, as a government, can we ensure access to affordable housing in workforce areas? And two, How do you change the trend, especially when banks have tightened down on lending? How do we encourage that new generation, as a government, or can we, to start investing in long-term mortgages and buying a home which is more permanent than a rental place?

- **Clower:** I think these are excellent questions and feed into some of the key research questions that we're addressing in other parts of this project. We have this team that's made up of these other universities that are studying, in part, some of these issues. I've been very impressed.

  - I was in Danville mid-August. Just what they've done with the restructuring. Southside has an issue as much as anything about when they're working on business attraction. It's not even affordable housing in that perspective. It's the quality of housing you have for the executives or middle management folks who are coming in that are looking for certain types of housing, too. But these are issues that we're actually going to address more broadly in the rest of the study.

  - I certainly have my thoughts on some of those issues, but I think I'll hold off on that and let us present you with the findings of the research, which can come to it with information that you guys can think of in terms of a legislative agenda.

- **Stanley:** My questions are How do we as a government solve some of these issues that you're talking about? You're going to tell us at a later date. Before the next General Assembly session?

- **Clower:** Well, I don't want to steal the thunder of my colleagues at the other universities who are going to be studying some of these key issues. That's not to make light of the challenges, because I don't know that we have every answer because we're struggling with this. In my region where George Mason is located, we have a severe problem with housing affordability. I have been told in recent months that there are economic development deals that we have lost because the company said, "I can't pay my employees enough to afford housing in your community." Now what I hope is that they found another place in Virginia to go to and didn't go to North Carolina or some other place.

- **Stanley:** They can come to Danville. We have affordable housing.

- **Clower:** Exactly! And you have the great broadband network, too.

- **Stanley:** In Martinsville, you can get a 5,000-square-foot house for $200,000. And they're nice. From the old industries.

- We're seeing not a large availability of rental. I think the price of rentals has been driven up because of the desire for them and the lack of really that kind of product in the marketplace. Wouldn't you agree?

- **Clower:** I would. The data that I've seen suggests that it's actually coming from two directions. You have the younger people who, because of school debt or they're not making as much money coming out of school as maybe previous generations did, whatever the reason, they're not entering into the ownership market as early. But then you also have baby boomers increasingly who are bailing on the ownership and moving into rentals. Part of it is convenience. If you're renting a unit, you no longer have to deal with the housing maintenance. I have a sneaking suspicion some of them are downsizing to places so that their kids can't move in with them. So there's a little bit of that factor going on. What we're actually seeing in the demand for rental is that it's kind of coming from both directions from an age perspective.

- **Stanley:** I think you'd have to not have a couch to keep your kids out. So then the rising cost of rental properties are going to keep the kids in our basements until they're 30.

  - I am concerned about one, in poverty areas, in breaking the cycle of poverty, the quality of housing that we have—I mean, if you can afford a place for 500 bucks, that's where you're going to end up, or in a single-wide trailer in our area.

  - If it's a nice apartment, normally it might go for [$]575, it's going to drive that demand up to [$]800, [$]900 because so many people want it. And you're going to keep that part of the marketplace, or those people that might participate in that part of the marketplace, out by virtue of demand.

  - When we talk about trying to find affordable housing for those at the poverty level that is good housing, that is safe housing, the market itself just seems to want to prevent that.

- **Clower:** I don't know if it's a matter of prevent, but there are certainly constraints on it. And certainly there are many issues that affect the pricing of housing that we have.

- **Stanley:** Sir, thank you for being here today and thanks for the conversation back and forth. And Bill, do you want to introduce our next speaker?

- **Shelton:** Well, those are great questions, Senator Stanley. I think that we are looking at that. The second part of this study is looking at both how it intersects with a variety of the different community systems, but also what are some best practices in areas where we should be putting emphasis. We don't have the final result of that, but I think we're going to give you a snapshot today of some of the early stage work that's being done. We have with us Mel Jones from Virginia Tech, the Housing Research Center. Mel, would you please come up and update us on what you're doing?

- **Mel Jones**, *Virginia Center for Housing Research at Virginia Tech*: I'm going to introduce to you the second half of the Virginia Housing and Economic Development Study, again recognizing that there are four universities, more than 10 faculty members participating in this study. Virginia Tech is leading the study and then participating are George Mason, VCU, and the Business School at William & Mary.

    - You just heard about the first part of the study, the housing economic impact analysis. Now, we are deep in the housing supply-and-demand analysis. We're taking a look at the existing stock; market dynamics, many of which you guys have already brought up; housing production, looking at the trajectory of the housing industry, what influences it, how it is performing, and how we expect it to perform in the future; housing affordability; and workforce demand in that context. also. And then finally we cannot consider housing without thinking about transportation and the location of housing. As one of you mentioned, the opportunities that housing presents for revitalization and redevelopment. And then finally, looking at the connection between housing and health and housing and education, especially as it impacts our further workforce.

    - The third and final part of the study is looking into the future of the industry and market scenarios. We'll be doing a baseline as if everything were to stay the same as it is today, we'll project that out to 2030. But then we'll also draw key themes from other parts of the study, thinking about how if certain parts of the industry or parts of the economy change how the housing industry might look in 2030.

    - Just to help you wrap your head around housing and economic development, I've given you some sample hypotheses that some of our faculty members are working on. Availability and affordability of housing and transportation are limiting factors for workforce attraction and retention. Again, this is thinking about providing the housing the companies need in order to hire and retain the employees that they need and/or locate in Virginia.

    - We're looking at housing production costs, land costs, and other associated costs that are threatening the market's ability to supply enough affordable housing and the idea that wages may not be keeping up with housing costs. Housing is a key component of revitalization and redevelopment, and in some areas of Virginia it's really the centerpiece of revitalization and redevelopment efforts both in municipalities and neighborhoods. And then, finally, we have the impact of housing on health and education outcomes, thinking especially about children in this context and the future workforce.

    - And again, just a note. These are hypotheses, so we are thinking about whether or not these are true or not.

    - I'm going to be using housing costs and incomes as a platform to discuss some of the preliminary findings from our work, as well as what we're going after at this moment. I'll note that we spent the summer talking to folks all over Virginia,

starting with the planning district commission directors and housing directors for housing authorities as a gateway. And then we talked to up to three people that they referred us to in their region to try to understand what these numbers mean in a region. Although we have broad numbers for each region and for each municipality, sometimes the underlying context of these numbers differs quite differently throughout the state.

- So, what you're looking at is percent change in real median incomes, inflation adjusted, and real housing costs. The bottom line in this context represents the growth in median household income, which you can see follows the dynamic of the housing bubble and the recession. So, 2005, that's our base year. After 2005, you see incomes and housing costs rise all the way through the height of the bubble. And then as you see, the bubble burst, and you can see the incomes begin to fall. And housing costs incurred by residents maintained for a little while, but then also began to fall.

- The rents you guys were discussing earlier increased because in the aftermath of the recession what you're seeing there are folks either switching from ownership to renting or choosing not to begin owning. You see an effect of supply and demand there, essentially increasing rent costs.

- As folks have made that switch and folks who chose not to make that switch enjoyed some great financing, refinancing options. You see the costs among owners decrease.

- **Marshall:** To Senator Stanley's question a few minutes ago, if I look at that red bar there, that is the rent?

- **Jones:** Yes, median rent. Change in median rent.

- **Marshall:** And so it peaked at about 11 and then it started coming down. Why?

- **Jones:** Why? Again, partially because of availability, partially because people are—as you know, the multifamily sector has been really the core of new housing development, in part because of financing and part because of demand. Really, you're seeing an influx of rental options throughout the state. And then you're also seeing folks moving back into home ownership as it becomes more affordable.

- **Marshall:** Okay.

- **Stanley:** Mr. Chair, follow-up question on that. If you are having a change in the mix of rental properties that are available—partially the result of the multifamily and that type of thing—and you have a situation where the average rent for a particular piece of property or a set of properties, whether it's single-family houses or townhouses or whatever is going up slightly, but the average being paid in rent is going down because it's a shift more towards the multifamily and those types of things, does that show up on this curve as going up or going down?

- **Jones;** I think that I'm understanding what you're saying. You have some single-family properties also transitioning into rental options. Is that what you want me to address?

- **Stanley:** No. What I want you to address is if the rents for each property are going up, say two percent, but the average rent that all people renting are paying is going down because the properties that are available for rent are more at the lower end. Is that showing up on your graph as a positive or a negative?

- **Jones:** It would show as a negative. This is median, which can be interpreted similarly to average. But it is shown as more stable because average can be highly impacted by extreme lows, which you're referring to, or extreme highs. Since this is the median, it's smack in the middle, but still influenced by that overall transition.

    - So what you're seeing is sustained higher rents and lowering ownership costs. Some good news in 2014 and 2015, which has been all over the news, is the increasing median incomes. We're starting, just by virtue of the good economy, to close some affordability gap. However, that will not solve our affordability challenges.

- **Marshall:** Before you leave that, the yellow, it says medium housing cost.

- **Jones:** The yellow solid line is the median owner costs, and the dotted orange line is the median housing. So this, together, is rent and owner, the dotted. There are far more single-family owned properties in Virginia. That's why when you add them both together it's skewed toward the ownership.

- **Marshall:** That number, you looked at just data of what the houses sold for.

- **Jones:** No. Actually, this is individual residents' housing costs. In the case of owners, this is your mortgage, insurance, taxes, and utilities. So, individual owner's housing costs.

- **Marshall:** If you are already homeowner, what does it cost to keep that house? It's not for the person who's buying the house.

- **Jones:** No. If you were to currently take a snapshot, everybody who owns, everybody who rents, what are their housing costs looking like? That's what is reflected here.

- **Marshall:** Thank you.

- **Jones:** Virginia's challenges that we have, still relatively stagnant incomes. We don't see an overall increase in incomes over this 10-year period. We have relatively high rents. Again, over the 10-year period is an increase in rents. And as I'll get to in the rest of the presentation, we have very diverse regional experiences. So, that graph does not look the same throughout the Virginia. Go ahead.

- **Stanley:** And, so again, the relatively high rents, I know there was a formula when you are buying a house that you wanted your payment to be a percentage of your income. For the high rents, did you look at what percent of the income is going to rent?

- **Jones:** Yes. We have been looking at that. I will say we should wait to speak to that until the rest of the study comes out because I need a very detailed graph to really discuss that in depth.

- **Stanley:** When that study comes out, can you break that down by geographic region?

- **Jones:** We can and we are. We are trying to do as much of our analysis as possible at the municipality level: county or independent city. Then there are some analyses that we cannot do except at the regional level because of data availability. And there's quite a bit of analysis that we'll do at the MSA level because that really is the housing market. And so we do that because we want to talk about *a* market instead of just a municipality.

- **Stanley:** Thank you.

- **Jones:** The good news is that we see rising incomes. Again, this is not true everywhere, notably in the Richmond area. The affordability of homeownership, really affordability of housing for about a third of the population is not improving.

    - Here is that idea of how much you should be paying for housing. Households who are cost-burdened pay 30 percent or more of their income for housing. Yes?

- **Marshall:** Define "cost-burdened."

- **Jones:** Yes, I'm just getting ready to. Thank you. HUD says that if you are cost-burdened, you may be making choices between housing and other necessities. So think about housing and medical care, housing and food, housing and educational opportunities. I recently read a study that the moment that you start paying less than 30 percent of your income for housing is the moment you begin investing in child enrichment. So when we're thinking about folks paying more than 30 percent of their income for housing, we are thinking about tough choices.

    - In front of you, you see over time, over a 10-year period again. Go ahead.

- **Marshall:** Again, I hate to dominate, but that number in Fairfax County has got to be a lot different than it is in Danville.

- **Jones:** It sure is. This is for the state and it sort of represents the middle. We have some areas that have many more cost-burdened residents than others. Over time, again, in the aftermath of the recession and the bubble burst, you see this housing cost burden or the percent of households who are cost-burdened go to the highest it's been in Virginia. Yes?

- **Stanley:** Just a quick follow-up on that. The numbers here are aggregated for the state, but they represent that the regions are different with respect to what is the threshold for cost-burden. Correct?

- **Jones:** This is kind of in the middle, I would say. You'll see specific regions in later slides, some that have far more cost burden nearing or over 40 percent of their population. Again, making those tough choices between housing and other needs. And then there are some regions with lower levels of cost burden. And I often caution people that we'll never get rid of cost burden completely because some cost burden is temporary. If you think of some folks trying to get into a market, find a job, some of those people are cost burdened, and they recognize that their earnings will allow them to get out of it.

    - However, as we've been looking at the regional employment dynamics, we're seeing that some people, even in the end of their careers, so earnings in the 90th percentile for their industry, cannot afford the median rent. They can't afford the median rent even if they double up with someone making the same earnings. Often these are folks in some of the largest industries by employment. For a large number of people, this situation is somewhat permanent.

- **Stanley:** Just to follow up to make sure I'm clear. For the almost one million people who are cost burdened, some of those people in that one million are going to be earning $30,000 in one neck of the woods versus [$]80,000 in another neck of the woods?

- **Jones:** Yes.

- **Stanley:** So those people are all going to have different thresholds depending on where they live?

- **Jones:** Absolutely. That's why it's so important to do this regional analysis.

    - Also note from this graph that the number of households in Virginia is growing. That's why you see 31 percent in 2005 and 31 percent in 2015, but the bar in 2015 represents far many more households.

    - Again, looking at the importance of regional analysis, here you have a different story than you saw at the overall state in Virginia Beach, Norfolk, Newport News. You see that the impact of the recession on median wages, median incomes is far more devastating in a way. But their housing costs have gone down in a steeper sort of trajectory, possibly somewhat supplementing that. However, on the next slide, again, it hasn't solved the problem. So 38 percent of households in this MSA are cost burdened. That's the highest in the state. And it's the 37th most cost burdened in the country. So out of 381 MSAs in Virginia, the—yes? In the country, sorry. In country.

- **Marshall:** Is it because there are so many military there? Is that the reason?

- **Jones:** No, that is not the reason. In fact, the military households are generally not cost burdened, is what we're seeing. We talked to the folks in the Hampton Roads PDC and got some ideas of what might be impacting this dynamic. Schools seem to be a really important factor, so we heard a lot about the quality of schools being very different in Virginia Beach and Chesapeake from the other municipalities in the PDC, and that folks are willing to accept cost-burden in order to get their kids into what they believe to be a higher opportunity area. They are looking for a transportation solution. Yes.

- **Stanley:** Just to be clear. Originally, I thought that perhaps they were cost burdened because they were sending their kids to private schools. But, indeed, it's different. They're actually buying into a neighborhood that they really can't afford because of the associative quality schools.

- **Jones:** Yes. Some people on an anecdotal basis. If you think about it, you're not ever going to be cost burdened because you're paying for a private school, in this case, because cost burden is coming only from housing costs. So, you're looking at people paying more than 30 percent for just housing.

    - Again, the Hampton Roads PDC is looking for a transportation solution because they feel like they have a mismatch between affordable housing, or even desirable housing, and jobs. You find that there's a high concentration of military jobs, both in Virginia Beach and outside in Newport News. And folks choosing only to live in Virginia Beach/Chesapeake and commute down in order to have access to those schools.

    - This is the kind of story that we're starting to hear: transportation and somewhat redevelopment as a solution to these housing challenges. Again, this is in the Hampton Roads PDC region.

    - Here's another region, the Charlottesville metro. In here, you're seeing what looks like extremely good news for median incomes, that they're increasing, and that rental prices have remained fairly stable. Homeownership prices or costs have decreased significantly.

    - When we talked to folks in the Charlottesville area, so the Thomas Jefferson PDC, we found that they're dealing with multiple issues in their metro area.It's a divide between urban issues and rural issues. High housing costs in the city of Charlottesville have actually had economic development consequences. So, they've seen companies choose not to move to the Charlottesville area because of extremely high housing costs and lack of availability in the sort of more affordable areas because of land use restrictions.

    - They also mentioned the fact that companies that grow up in Charlottesville, new entrepreneurs starting businesses in Charlottesville, do not consider the Charlottesville region as a place to expand, especially into manufacturing.

They're looking beyond the region, and beyond the state at times, to find advantageous places.

- They specifically mentioned high housing costs and inability to add housing in the Charlottesville/Albemarle area as issues that they find challenging. They are doing some targeted redevelopment to try to add housing and try to bring that affordability issue under control.

- **Male:** Mr. Chairman. I assume that, in general, when you have areas like Charlottesville where there's population growth occurring, that, in general, that would tend to push up housing costs. Yet this is showing that they're just below the state average in terms of people who are cost burdened. And the irony is—and you talked earlier about the Hampton Roads area where there is very little population growth.

- **Jones:** When you look at the Hampton Roads area as a whole, influenced by some of the rural areas and some of the areas that have become less desirable for folks to move to, you may see sort of less population growth. But when you look at places like Chesapeake and Virginia Beach, you see quite stable and increase in population growth, and really beginning to see extremely low vacancy rates that indicate that housing is a major constraint.

  - We hear anecdotes, but it's not always exactly what meets the eye. Housing costs could be driven up by this sort of constriction of the housing market. Whereas in Charlottesville, you have a rural area that—especially if you look at housing starts in say Green County—they have room to grow, and there's a little bit less pressure. Does that make sense?

- **Male:** Somewhat, anyway. In the Hampton Roads area, you have moderate population growth in Chesapeake and Virginia Beach and actually a little higher in James City County and part of York County, and a little bit in Suffolk too. But the aggregate over the region is very slow population growth.

- **Jones:** We are right now doing a housing needs assessment for the Virginia Beach area, outside of this study. While Virginia Beach's population growth over the past 20 years has sort of plateaued, in the recent 10 years, it's actually shown sustained increasing population growth. At the same time, there's not been much housing added. So again, you're getting this constriction there that may not be the same story as in Charlottesville, for example.

  - Here, you're looking at the Lynchburg metro area. Again, one of those areas, like I mentioned Richmond, that hasn't experienced the recent good news in increase in median incomes. There is a little increase here, but mostly they're still dealing with impacts following the recession. When we talked to folks in the Lynchburg area, they described their market as slower to respond to economic events as compared to the rest of the state. You also see an increase in rental prices and not the same magnitude of dip for the housing costs. Again, this would also indicate

that they're a little bit maybe slow to respond to recessionary effects or economic events compared to the rest of the state.

- About 27 percent of households are cost burdened in this MSA, and it's among the lowest for the state and mid-to-low for the country. If you compare Virginia to the country in terms of MSAs, we are relatively cost burdened. We are not the most affordable place to live.

- In the Region 2000 Lynchburg area, we found that housing is the biggest challenge for very low-income households. Where cost burden is lower, it is more concentrated among very low-income households. Where you see higher levels of cost burdens, that's often where we think about cost burdens have expanded into moderate income, up to 120 percent of AMI. But where you see these low levels of housing cost burden, it is primarily concentrated among the mid-to-low-income households.

- As we've been working, we found that housing for very low-income folks and housing for moderate-income folks is very connected. People would prefer not to pay 30 percent of their income for housing. If they can get by with less, they're going to. And those higher-income households compete more effectively for the housing units that are on the ground, so they get first dibs, in a way. And depending on what your housing market looks like, that could leave basically substandard housing for lower-income groups. So they're very connected. And I should note that you cannot really address them separately.

- **Marshall:** Can I ask that the next time you do this update if you could include the unemployment rate for the region?

- **Jones:** Sure, yes.

- **Marshall:** It might be interesting.

- **Jones:** Yes, definitely.

- **Marshall:** One other thing: average household income.

- **Jones:** Yes, absolutely.

  - The Region 2000 PDC mentioned, as we heard in a number of PDCs, that housing is an opportunity for redevelopment and revitalization. They talked about the importance of the historic tax credit in their area and the opportunity to redevelop old warehouses as housing options in more urban areas with amenities in close proximity with specific ideas of attracting either active aging adults or millennials.

  - I also want to note, as you guys asked before, we are taking a very close look at the millennial generation. This is the biggest generation that we've had. It far outweighs the baby boomer generation, and it's very important to understand

their housing preferences. We are taking a look both nationally about housing preferences among millennials and in Virginia at how millennials are acting. We are getting into a great time to look at millennials because the oldest millennials are beginning to become the core of the housing market and are starting families and things like that. So we're taking a very close look at the Millennial Generation. Go ahead.

- **Stanley:** So building off that, because I think one of the themes we've had throughout a lot of the presentations is the difference in housing preferences by millennials. I'm a Gen Xer, and the idea was always to own your own single-family home. And we're starting to see that change. So earlier on, we had seen the economic impacts of housing in Virginia. I'm wondering, have you looked at what the impacts will be based on future trends if we continue this same way? I'm thinking we're not going to get millennials to suddenly decide they want the single-family home as opposed to a condo or an apartment in a downtown area. So what are the impacts on our economy and how do we plan for those impacts?

- **Jones:** Right. One thing I want to caution is that we often think of millennials only seeking to live in this urban area. And when we say *urban*, we mean big urban areas—so DC metro. But that's a myth. About 40 percent of millennials actually don't want to live in an urban setting. They would like to move to a more suburban or rural setting.

    - So it's important to make that distinction, that the older these millennials get, the more we're learning about them, and the more we're starting to dispel the myths that we created when they were very young. That said, they do, generally, have different housing preferences for different types of housing, for different locations of housing, and the time they want to spent, and the importance of housing to them.

    - So we are looking at how those changes are likely to impact the housing industry in a very general way. If we determine—and that's with our stakeholders in that Housing Policy Advisory Committee and our staff stakeholders from VHDA and DHCD—that that isn't such an important trend that we need to look at it, exactly how it's going to affect the economic impact in 2030, then we will take that on as one of our scenarios. So again, that would be the third part of the study. Go ahead.

- **Stanley:** Quick follow-up. To what degree or how much are you communicating with the industry, and I'm thinking with Mike Tolson. The challenge with housing, as we were talking earlier, is that it's cyclical. So you're making these investments, and you'll do speculation. Things won't pan out, and then they'll drop off. I guess what I'd hate to see happen is that housing preferences continue to change, and we don't change the way that we do development, and then we wind up in a pickle. So is there a mechanism for you all to be communicating on a regular basis—okay. But that's stuff that you are integrating into how you're investing and you're developing your marketplace. Okay.

- **Jones:** We're trying our very best to engage builders and developers as much as we can as part of this work to be an information source for them. But it's also so important to talk to essentially the economic agents that are part of this industry in order to inform our analysis of the data, our interpretation of the data. We're learning a lot from them and vice versa. Yes, absolutely.

- **Marshall:** Any further questions? Thank you for being here.

- **Jones:** You're welcome

- **Marshall:** Bill, do you have any wrap-up?

- **Shelton:** Mr. Chairman, I think we are very much interested in building our investments. Our economy is moving in directions that we want it to move faster. But as we invest—these are housing investments. So, what we want to make sure of as we align the resources that we do have, is that we're doing it in the most thoughtful way. This study is beginning to inform that. We're moving in directions, and we want to be as effective as we can be. I think what you should also take away from this is that, as you've already pointed out, there is not a one-size-fits-all solution. The Virginia solutions are going to respond to specific market needs there, and we need to be responsive in all areas of the Commonwealth to meet the needs.

    - We'd be happy to come back in the future as this unfolds. It looks like maybe in the spring would be a good time to come back and give you more complete info.

- **Marshall:** Okay. Thank you for being here today.

- **Shelton:** Absolutely.

- **Marshall:** We're going to now go to reports from the work group. We're going to start with Delegate Bulova with the Common Interest Communities. And, David, if you'll give us an update on the work you all have done.

III. Reports from Work Groups

- **Delegate David Bulova**, *Common Interest Communities*: Thank you. I'll keep this relatively brief.

    - We met on July 21st. We had two bills that we were dealing with, and we also got a really good update from Trish Henshaw on the work of the Common Interest Community Board and some of the things that they're working on.

    - The two bills that we had, one was Senator Chap Peterson's bill dealing with home-based business and property owners' associations. The bill that he had put in really looked at prohibiting HOAs from being able to say No, you can't have a home-based business within your residence. That kind of morphed into a

discussion about home-based childcare and whether that is a business or not. So that's kind of how it ultimately came out to us.

- I think what Senator Peterson was ultimately looking for was a way to say that a homeowners association couldn't prohibit a home-based daycare unless their declaration specifically said that they could do that. Of course, most declarations are much more general than that and talk about businesses. They don't get as specific as about a home-based daycare. And so I think we thought that was problematic.

- Now, there was a lot of really, really good discussion that went back and forth. I think one of the potential solutions that was thrown out there is making sure that the way that an HOA defines a home-based business versus a residential ancillary use, that that matches up with what the locality says. And so I think there were some instances out there where a locality was saying Hey, this is a residential ancillary use. And the HOA would say Hey, no, we think this is a business and we should be able regulate or not allow it. And so I think that was kind of a narrow potential path forward to say If the locality defines it as residential, then the HOA should define is as residential and how do we do that?

- Ultimately, though, we did not come up with any particular recommendation. I think Senator Peterson left with some good ideas that he would cogitate on, but I don't think that this is something that the Common Interest Communities work group is going to be coming up with a recommendation on. It was really just a good conversation. And Senator Peterson will go back to the drawing board and then likely introduce something for next session.

- The other one is a little bit more promising. That's Delegate Watts. This one deals with the fees for disclosure packets for new people who are moving into a neighborhood.

- When we set this system up or the last time we dealt with this system, we actually made a distinction between a self-managed association versus a professionally managed association with regard to what kind of fees could be collected. It was a little broad the way that we put that together in that, primarily, when you think about a self-managed association, you're thinking about something that's a cluster of 10, 20, 30 homes as opposed to what we are now realizing: that there are self-managed associations that have hundreds of homes and really take on a lot of the functions that a large association would have.

- I know Chip Dicks is working with a patron to come up with a way to be able to marry those interests. At least from the last time I talked with him, he felt reasonably confident that we might be able to come up with some kind of compromised legislation that would move forward.

- It will require another meeting of the work group. I don't think it's any more than about a half-hour conversation. What I'm hoping will happen is that we can

dovetail that in with one or another work group that would be meeting on the same day. That's it.

- **Marshall:** Any questions of Delegate Bulova? Thank you, sir. Let's move on now to Senator Locke and her work group. Thank you.

- **Senator Mamie Locke**, *Neighborhood Transitions/Housing and The Environment*: Thank you, Mr. Chairman.

    - The Neighborhood Transitions and Residential Land Use and Housing Environmental Standards work groups had a joint meeting in August. We had four issues that were covered. The first dealt with recordation of deeds and liens, and I believe this was your legislation, Mr. Chairman. We had Corey Wolfe , the assistant city attorney for Danville, speak to this issue. Chip Dicks also spoke to this dealing with legislation for a pilot program in Danville. Chip, do you want to speak to this now? We know that we will have to have a second meeting because there are three issues that are still outstanding for this work group.

- **Chip Dicks:** Mr. Chairman, members of the Commission. Where we are is that Whitt Clement and Rob Bohannon and I are continuing to work on language. We're about 80 percent there. I think by the time we have our next meeting, we'll have an agreement. I've met with the clerk's association, and they are willing to stand down based upon the compromised language. I've talked to the clerk of Danville, and he's prepared to participate. I believe the City is prepared to participate on the terms and conditions that we've worked out. I think it's an evolving process, and we're very close. Hopefully we'll be able to report something back at your next meeting.

- **Marshall:** Any questions of Chip? Thank you.

- **Dicks:** Thank you, sir.

- **Locke:** The second issue is a bit more complicated. This was legislation that I brought forward that was a part of the legislative package for the City of Portsmouth. It deals with historic districts that are not within a homeowners association. Sherri Neil for the City of Portsmouth and two representatives who live in a historic district spoke to this issue. As a result of what we heard, we formed a sub-work group that has had one meeting. They are going to be meeting again soon. Mark Flynn and Chip are also a part of that sub-work group that's meeting to try to resolve this particular issue. I know that you are guys are meeting again relatively soon on this matter.

- **Dicks:** Yes, ma'am. And what we've done is Mark and I have talked about concepts of language. The agreement was that we would work on language and then share it with the broader work group and see if we could resolve that issue.

- **Locke:** Okay. The third issue dealt with groundcover and proximity to buildings. Cindy Davis from the state Building Codes Office spoke to this issue. The work group

basically decided that this is best handled by the building codes process. So that's where we left it.

- The fourth was dealing with recycling programs for multifamily dwellings. This was a bill that was brought by Senator Ebbin. Brian Gordon from the Apartment and Office Building Association spoke to this. Currently, there's a study being conducted by VML and VACO to determine how many localities recycle at apartment complexes and require recycling to get some additional information on this. They will bring it back to the work group so that we can determine how best to move forward on this issue.

- We will be having a second meeting of the work group on the three remaining issues in our group.

- **Marshall:** Are there any questions from the committee of Senator Locke? Thank you. Delegate Peace could not be with us today, so Senator, you'll give us report on the progress, all the slings and arrows.

- **Senator**: Well, it has been entertaining. We've had, to say the least, very lively meetings of the work group on this particular issue. We've had three meetings so far. I'm doing Airbnb. They've been lengthy meetings, so they've gone multiple hours. Maybe it just seemed like they were interminable. But they've gone beyond two hours. We had a lot of different presentations at each of the meetings. We have a large number of people who are attending those, so actually we've been meeting over in the Capitol. I guess it's in House Room 3 there for those meetings.

  - I think the first meeting or two, we had a good bit of difference of opinion from different individuals and entities that were speaking, from some of the neighbors who have objected to some of the Airbnb properties to some of the localities that have been concerned about the number of units that are out there that are not paying their taxes and other types of things. We've also had presentations from the Airbnb people and from a number of others related to the industry and why some of the individuals who are participating in that are doing so.

  - Thus far, it's been mostly an information-gathering process, but I think we are moving at least closer together in terms of how we might be able to do it if we move forward on this. Hopefully, there will be some consensus on proposals coming forward before we get to the end of the year so that legislation presumably could be considered during the legislative session starting in January.

  - There have also been some stakeholders who have been meeting and trying to work on differences and see where they might be able to come up with compromise on things that would not necessarily have us in the middle on everything.

  - We're going to continue, but it certainly has been a lively group.

- **Marshall:** Any questions on Airbnb? Okay, Elizabeth, would you want to go through the rest of the affordable housing?

- **Elizabeth Palen:** Affordable Housing met on July 14th, and we took up several topics. The first one was concerning companion animals and rental property. We heard from five different speakers; Bismah from the Apartment and Office Building Association gave us a presentation about how she obtained a fraudulent document saying she was in need of a companion animal. Based on all that information, we put together a sub-work group, which has met once. We looked at a bill draft and also an opinion from the AG's office. We will meet again to solidify the draft and look forward to having some legislation on that issue for the full Commission to review.

    - We also looked at a bill from Roxanne Robinson about real estate disclosures. It was disclosures about septic system cleanouts and some other issues. She came to speak to the Commission. Basically, what she wanted was incorporated into some legislation from last session, so we don't see it as likely that there's any legislation forthcoming on that issue.

    - The third issue we took up was the impact of tenant bankruptcies on landlords. It was an issue Senator DeSteph brought to us. He outlined where in his district landlords were being left on the hook when tenants went bankrupt. We had a good discussion about federal bankruptcy law and did some further research. We think the consensus of the group was that federal law needs to be followed, and there's not likely to be legislation on that issue, either.

    - We will meet again on the companion animal issue and maybe hold a joint meeting with other work groups just to go over that legislation.

- **Marshall:** Do we have any questions of Elizabeth on the affordable housing subgroup?

    - Okay. Our next full meeting is scheduled for December 14 at 10 a.m. In the past, we have had a November meeting. We're not planning on having a full November meeting. What I ask of the work groups is that if you have legislation that you want to be presented before the December 14 meeting, please get that to Elizabeth. What I ask of you is I'd like to send all of that out by e-mail to all the members here so that we can take that up, and you'll at least know what you're going to look at before you get here. Any thoughts about that? Hearing none.

    - Again, that's December 14. It's scheduled for 10 a.m., but if we need to move it to 1 p.m., we could do that. So if some of the work groups wanted to meet that morning, we could also do that.

    - Any questions or comments before we break here? It's time for public comment.

IV. Public Comment and Adjournment

- **Mike Tolson:** I'm Mike Tolson with the Homebuilding Association of Virginia. I just want to thank Secretary Jones and I'm sure Secretary Haymore, I'm sure, for continuing this study. I want to thank Director Shelton and VHDA Director Dewey for following through with this.

    - I just think it's absolutely critical for people to understand the economic value of housing in Virginia. Somehow, over the years during that growth period it kind of took on a negative connotation. We knew how many jobs we were creating. We knew that every time a single home was built that there were 40 to 50 local contractors on the job, and its acquisition, financing, and construction.

    - I wanted to express to them how much I appreciate that. It appears to me they're drilling down and are going to get some real answers for some really difficult questions that are out there for all of us. So thank you.

- **Marshall:** Thank you. Anyone else want to tell us how the world should be? All right, hearing none, thank you for being here today.

- Hearing no further comment, the meeting was adjourned at 12:15 P.M.

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

AGENDA

Virginia Housing Commission
Wednesday, December 14, 2016, 10:00 AM
House Room C, GAB

I. Welcome and Call to Order
-Delegate Danny Marshall, *Chair*

II. Maggie Walker Community Land Trust
-Bob Adams, *HDAdvisors*

III. Reports from Workgroups

1. Affordable Housing, Real Estate Law, and Mortgages
-Delegate Christopher Peace
   - Assistance Animals and Rental Property (Recommended by Workgroup, Bill in Binder)
   - Real Estate Disclosures (No Legislation)
   - Impact of Tenant Bankruptcies on Landlords (No Legislation)

2. Neighborhood Transitions and Residential Land Use
-Senator Mamie Locke
   - Recordation of Deeds/Liens; Pilot project Danville (Bill in Binder)
   - Disclosures in Historic Districts (Recommended by Workgroup; Bill in Binder)
   - Recycling in Multi-family dwellings (No Legislation)

3. Common Interest Communities
-Delegate David Bulova
   - Small self-managed CIC's and Fees (Bill in Binder)

4. Short-Term Rentals
   -Delegate Christopher Peace
   -Lisa Wallmeyer, *Division of Legislative Services*
   (Bill in Binder)

V. 2016 Cash Proffer Report
   -Kristen Dahlman, DHCD, *Policy & Legislative Office*

VI. Election of Chair

VII. Public Comment and Adjournment

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
Wednesday, December 14, 2016, 10:00 AM
House Room C, GAB

I. Delegate Danny Marshall, *Chair,* called the meeting to order at 10:05 AM.

Members in attendance: Delegate Daniel W. Marshall, III, *Chair*; Senator Mamie E. Locke, *Vice-chair(by phone)*; Senator George L. Barker; Senator William Stanley; Delegate David L. Bulova; Delegate Betsy B. Carr; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee;* and Laura D. Lafayette, *Governor Appointee.*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Welcome and Call to Order

- **Delegate Danny Marshall**, *Chair:* We're going to have Bob Adams with HDAdvisors to start with?

- **Elizabeth Palen:** Mr. Chair, first, Secretary of Commerce and Trade is going to say hello and greet each of us.

- **Marshall**: Yes. Please come forward. Welcome. You are always welcome.

- **Secretary Todd Haymore**: Mr. Chairman, members of the Commission, thank you for having me. It's always an honor, Delegate Marshall. As you mentioned, being with you yesterday in Martinsville and Henry County for that new investment and 50 new jobs. My guess is we're going to need some homes for those jobs as well. So thank you for being a part of that.

    - Elizabeth was kind enough to ask me to come by as part of-I guess what we're calling-the learning tour of the first four months that I've been in as Secretary of Commerce and Trade and learning all the things that we do. Obviously as we discussed, Delegate Marshall, the Governor's asked me to focus in on economic development and global trade enhancements, but recognizing full well that there

are a number of other issues that the Secretary is in charge of: community development, workforce development, and in this case, the work that you all do, particularly with two agencies I know, Bill Shelton and the Department of Housing and Community Development, and Housing Authority and others.

- So I just wanted to come by this morning to thank you for the work being done by the Commission, the legislative members, and also the gubernatorial appointees. I just wanted to let you know that as Secretary, I stand ready to assist the Commission in any way that we can. Obviously, with Director Shelton at DHCD, and the rest of my staff, if there's anything that we can do. We look forward to working with Elizabeth and you in any way possible to provide more opportunities for safe, affordable housing in the Commonwealth of Virginia, recognizing that it does play into community development and economic development as well.

- **Marshall**: Yes, absolutely. Let's see if we have any questions of the committee? Seeing none, again, you're always welcome. Looks like you have a comment that you're ready to say.

- **Haymore**: I was just getting ready to comment that I was escaping before Senator Stanley asked me any questions. Thank you very much, Mr. Chairman.

- **Marshall**: Okay. All right, Elizabeth, what's next? Are we going to talk about Maggie Walker Community Land Trust?

- **Palen:** Yes. It builds on the work we were doing last year with land banking.

- **Marshall:** Thank you. Welcome.

III. Maggie Walker Community Land Trust

- **Bob Adams,** *HDAdvisors*: Mr. Chairman, I'm Bob Adams. I'm a housing consultant here in Richmond, and I am working with Maggie Walker Community Land Trust. I wanted to take just a couple of minutes to tell you about what's been happening with the land trust here in Richmond.

  - This is a topic we talked about with the Commission last year, particularly in the context of talking about land banks. Land banks and community land trusts are two vehicles that can work in partnership to create affordable housing.

  - A community land trust is basically a non-profit organization that provides affordable housing in a unique and unusual way. It does this by providing affordable housing both as an asset to the homebuyer, but also as an asset to the community where that home is located because that home is affordable and available not just for that first family that buys it, but it's available as an affordable home within that community in perpetuity. That's the basic way in

which a land trust operates differently than most non-profit affordable housing providers.

- There are a lot of land trusts across the country, over 250. There are many statewide community land trusts as well. We have in Virginia now three community land trusts: one in Charlottesville, one in Richmond, and one that's just formed in Newport News.

- I want to talk to you a little bit about the Maggie Walker Community Land Trust that is up and operating in Richmond. I should point out that one of your Commission members, Laura Lafayette, serves as the chair of the Maggie Walker Community Land Trust.

- The goal of the Maggie Walker Land Trust is to do three things: to increase access to affordable homeownership in Richmond, to make sure that we continue to have neighborhoods in Richmond that are permanently affordable to lower-income families who want to become homeowners, and also to stabilize transitional neighborhoods by increasing the amount of homeownership in those communities.

- One of the unique things about land trusts is the way that they're governed, and that is typically a tripartite form of board governance. It includes the land trust homeowners. It includes members of the community who live in the neighborhood where the land trust is located and care about the community. And it includes broader representatives from the community or from local government who are committed to increasing affordable housing. That one-third/one-third/one-third ratio of board members is typical of land trusts across the country.

- The basic model that a land trust uses is that it splits the ownership of the land and the structure that sits on it. So the land underneath the house is owned by the community land trust. The homebuyer purchases and finances the house that sits on the land. So, immediately, the land trust makes the home more affordable by removing the cost of land from the amount that the homebuyer needs to purchase. The land trust leases the land to the homebuyer on a 99-year lease. And through that lease, it controls the future sales prices of the house. And it also controls the income level of the next buyer or all future buyers.

- This is a model which is referred to as *shared equity*. In the case of the Richmond land trust, the Maggie Walker Land Trust, the board has decided on a 50/50 equity share. So what that means is as the market value of the house increases, the homebuyer earns 50 percent of that increase in value. The other 50 percent is not added to the future sales price. So the price of the house remains more and more affordable as compared to the market prices of homes around it.

- In this example, you have land cost of $25,000 and an initial home price of $150,000. So the family buys the home for $150,000. If it weren't a land trust home, it would sell for $175,000. So there's that initial affordability benefit. Then let's assume that the family lives there for five years. During that period, the price of the home goes up $25,000. It goes from $150,000 to $175,000, the value of the house. The family decides to sell at the end of five years. At that point, 50 percent of that increase in value is added to the price they paid for the home. So they would sell the home at that point for $162,500 plus whatever realtor or other transaction costs. If the house were not a land trust house, that next sale five years from now would have been $175,000 plus the $25,000 land. It would be $200,000. So what sells in five years for $162,500 is actually a house worth $200,000.

- If you think about a graph which has two lines on it, one line is the increase in market home prices in an area, and the second is the CLT's home price. The gap between those is the benefit that that CLT is providing to the homebuyer and to the future homebuyers. That gap grows over time. So that house will be more affordable 10 years from now, 20 years from now, 30 years from now.

- **Marshall**: The other areas that have already done this [are] on this slide, other states. How many years has this concept been around?

- **Adams:** It's been around for a long time. The very first land trusts were done up in New England, and they were done probably 40 years ago. Some of the oldest land trusts are up in Vermont, New Hampshire, and Massachusetts.

- **Marshall:** So the value of that house is what the market will pay for that house? Who determines the selling price? The market determines the selling price?

- **Adams:** The sales price of the house is determined by the lease agreement between the community land trust and the homeowner. Every land trust does this a little bit differently. They have different shared equity models that they use. The Charlottesville Land Trust uses a 25/75 split. So the homebuyer in Charlottesville, they receive 25 percent of the increase in value. In Richmond, the land trust here has decided to use a 50/50 split. That gives the homeowner a somewhat larger stake in the appreciating value of the house. But the price of the home is always determined by the community land trust and by the provisions that are in the lease agreement.

  - The other provision in the lease agreement that's important is the restriction on the income of the future homebuyer. So not only does the house remain affordable, but we make sure that home is going to be occupied by a low- or moderate-income family in perpetuity. And that's one of the intentions of the land trust, is to make sure that neighborhoods remain mixed income and that homeownership remains a possibility for working families in communities—and in our case, in communities throughout Richmond.

- **Marshall:** So how many houses does your group have in Richmond now?

- **Adams:** The land trust is just getting underway, so at this point there have been no houses completed. The model in Richmond is really twofold. One is to access tax sale property from the City of Richmond, and the City of Richmond has been a partner with the land trust up to this point. We expect to have a pipeline of some tax sale property, both lots and tax sale houses that come to the land trust over the next year. The land trust also has been successful in raising philanthropic money and will use that money to purchase some lots.

    - Let me just show you one other slide very quickly about Richmond, one of the reasons why this is important. You're not going to be able to see this very well. Richmond has both a blessing and a curse. A lot of people want to live in Richmond right now. It has created a fairly active real estate market in the city. And so we are experiencing change in a number of neighborhoods in Richmond that were traditionally lower income. One of those neighborhoods is North Church Hill. This is the neighborhood where the Maggie Walker Community Land Trust has chosen to begin its work and focus its early work.

    - If you could see these slides better, this just shows you some examples of what's happening in Church Hill. The dark areas are easiest to interpret. Just looking at the dark areas will tell you the pace at which sales are happening in North Church Hill and on the right, changes in sales price. Those are sales where there is, I believe—I can't quite read the legend—there are significant increases in sales price at each sale.

    - This kind of data tells us that this neighborhood is transitioning rapidly. And without some intervention, this is a neighborhood that will become unaffordable to people who have lived there for a very long time and who've considered Church Hill to be their home—for whom Church Hill is their home.

- **Marshall:** Okay, thank you.

- **Adams:** I don't need to tell the Commission about why we need affordable housing. We have a significant shortage of affordable housing in the city. This chart will show you for a variety of jobs within the city, average wages compared to the average wage to afford a median sales price in the city. So we have many, many working Richmonders who would like to both live and work in the city and would like to get a stake in homeownership in the city, but are unable to do so. So the land trust is one way in which we can achieve that.

    - These are some examples of the types of homes in North Church Hill. This is an example of a home recently built in that area on North Thirty-First Street which has a $400,000 sales price. The price escalation in this neighborhood is quite dramatic. The land trust is going to be one way to put a brake on that and to continue to offer opportunity for affordable homeownership in a neighborhood that's changing pretty dramatically.

- The Maggie Walker Land Trust is legally formed. It has been operational for not quite a year. It has a 501(c)(3) application pending. It has developed all of its policies and procedures and expects to begin to acquire property in the first quarter of 2017. And we hope to have three to five houses underway next year.

- I'm happy to answer any questions.

- **Marshall:** Any questions of the members of the Commission? Sir, back to that picture with the $400,000 house. The person next door to that, if they have one of your houses, a CLT house, does that hurt that $400,000 resale value down the road? In other areas, you said some of them have been doing this for 40 years or so. So does it hurt the neighborhood's value or people are just stepping up and buying the houses?

- **Adams:** The sale of a land trust home or the sale of any house that has a deed restriction or a sales price restriction built into it from financing, that should be reflected in any appraisal that's being done on a non-restricted home. I've communicated with a lot of land trusts around the country, and I have not heard that this has been a problem in any community where land trust homes were having a negative impact on appraisals in the neighborhood.

- **Marshall:** So how do you choose who gets the house and who doesn't get the house?

- **Adams:** It's really like any other affordable housing non-profit. It's essentially a first-come/first-served process. We're going to begin to do community outreach in the next month or so. We'll begin to develop a pipeline of persons interested, households, families interested in buying a land trust home. They have to go through homebuyer readiness and homeownership counseling. They have to get mortgage qualified by a mortgage lender. We'll work with families as they come up through the pipeline.

- **Marshall:** Okay. Further questions of Commission members? Yes, please.

- **Male:** When you talk about home values of the surrounding values—and let's just take by way of example that picture of the next door neighbor who is selling their house or has got a contract. An appraiser comes in and he's looking at comps to appraise the value of the house as part of the negotiating process, part of the settlement process. Are we assured that the appraiser is going to throw that one out? I know you say, Well, this is different. But is that not going to be a part of the appraisal process where a comp is used, and this house is sold for less value is not included in that appraisal process? What assurances are there?

- **Adams:** When a community land trust house is sold, it's identified as a land trust sale. It is a very different type of sale because it has a land lease. So any appraiser is going to recognize that this sale is unique and different. And I think the practice has been if an appraiser identified a sale which has a restriction built into it from a governmental loan or from a deed restriction that that is addressed as a part of the appraisal, that that sales price is adjusted or is not included in the appraisal of the property that they're doing.

- **Chip Dicks:** Mr. Chairman.

- **Marshall:** Yes, sir.

- **Dicks:** We're hoping they do that. I mean, there's nothing that compels them to do that.

- **Marshall:** Chip—

- **Adams:** There may very well be standards within—and I'm not an expert on appraisal standards.

- **Dicks:** Oh, I get that. And I'm not trying to hold you to that.

- **Adams:** Right. But I suspect there are standards for appraisers that require them to look beyond the simple sales prices of a house. I think especially in situations like this where there would be an immediate tipoff because it's a land lease sale.

- **Dicks:** Thank you, Mr. Chairman.

- **Marshall:** The land trust, did you need legislation to do this?

- **Adams:** No. This was really for information. It was really a follow-up. We did a presentation last year and this was—

- **Marshall:** I didn't know if we had passed a bill in the past to allow this or not. Okay. All right. Other questions of the Commission members? Okay. Sir, thank you so much for your time coming this morning. Have a great day. Merry Christmas.

IV. 2016 Cash Proffer Report

- **Marshall:** Mr. Shelton, you have staff members here who are going to do a presentation. Would you like to introduce them, please? Thank you for being here. You have a very festive tie on this morning.

- **Mr. Shelton**: It is the season.

- **Marshall**: It is the season.

- **Shelton**: Don't get many opportunities. Mr. Chairman, from time to time, you have asked us to come before you to present on a report that the legislature has requested on cash proffers and their implementation in the communities. That work is done by the Commission on Local Government, which is now part of the Department of Housing and Community Development. We have with us today the head of that office, Elizabeth Rafferty, and David Conmy, who is the local government specialist overseeing [unintelligible]. But Kristen Dahlman is the one that actually does the report, and she's going to be presenting to you today, Mr. Chairman.

- **Marshall**: Welcome. Again, your name, ma'am?

- **Kristen Dahlman**, DHCD, *Policy & Legislative Office*: I'm Kristen Dahlman.

- **Marshall:** Okay, thank you. It's the last report in our book, proffer report.

- **Dahlman:** Good morning, Mr. Chairman and members of the committee. Again, I'm Kristen Dahlman, the senior policy analyst with the Commission on Local Government. I'm here to report on our recent 2016 Cash Proffer Report that was recently adopted by the Commission on October 15th. I'm going to provide just a brief overview of cash proffers and proffers in the Commonwealth and also share some highlights and trends from the report. I'll also just offer a little insight on the recent cash proffer legislation as it relates to our report.

    - Section 15.2-2296 of the Code of Virginia authorizes governing bodies to accept proffers through conditional zoning. Localities under certain sections of the Code have been authorized to accept proffers since the 1950s. The number of localities authorized to collect cash proffers; that number of localities has been expanded over the years. I'll go a little more into detail on that.

    - Cash proffers are a type of proffer voluntarily offered as a part of a conditional rezoning application. It's usually offered to offset the fiscal implications for demand of public services.

    - There are three different statutes that authorize the collection of cash proffers. In 1990, Sections 15.2-2303 and 15.2-2298 expanded the eligibility to counties with an urban county executive form of government. Localities with a decennial census growth rate of 10 percent, and localities with certain adjacent contiguous proximity to localities meeting those two criteria, and any county east of the Chesapeake Bay. In 2006 they changed it from to 10 percent to five percent for the decennial growth rate. And then in 2007, New Kent County was also added to be eligible.

    - This is just a visualization to show you who would be eligible under those three statutes that I mentioned on the previous slide. So any locality in gray or red denotes eligibility. Those who are not authorized are shown in white for comparison. Most of them are in southwest Virginia, and a few are scattered on the Eastern Shore.

- **Marshall:** Back to the five percent growth. Is that five percent from year to year or does it look at a running average? If I look at that map up there, what I would have thought would have been red is not red.

- **Dahlman:** Over 10 years, decennial. So out of those who are ineligible, it's about eight percent of the Commonwealth. So the 26 localities that are not eligible include two cities, six counties, and 18 towns.

- I included this visualization to show the number of localities reporting cash proffer activity since the report's inception. As you can see, over time the majority are counties that are collecting, followed by cities, and then towns. The highest amount of localities reporting cash proffer activity was in 2007. After that we saw a decline up until 2013, when we started to see an uptick again. It went back down in 2015, and then we went back on the rise for this past year in fiscal year 2016. So, for fiscal year 2016, cash proffer activity occurred the most in counties at 68 percent, followed by 17 percent for cities, and 13 percent for towns.

- Once a locality receives cash proffer funds, there are certain guidelines set forth that must be followed, so I just want to go over those briefly. They're all found under Section 15.2-2303.2. So Section A, a locality must begin construction or make progress, site work, etcetera, or engineering within 12 years of full payment of cash proffer associated with an approved rezoning application. If not, localities must forfeit the funds to the Commonwealth Transportation Board.

- For Section B, capital improvement programs must include all proffer payments received during the most recent fiscal year. Capital budgets must include the amount of proffered cash payments predicted to be used in the ensuing year.

- Under Section C, there is some flexibility in cash proffer usage in that a locality may use proffered cash for capital improvements for alternative improvements of the same category. That's subject to a public hearing and notification given to the proffer. Also, they can use proffered road transportation funds as matching funds for VDOT's revenue sharing program, provided the project is in the locality's capital improvement program. So, just slight flexibility there.

- Finally, any localities with a population in excess of 3,500 must report to the Commission on local government cash proffers received and expended starting with fiscal year 2000. That's where we started.

- The survey instrument that we use is nearly identical to what is laid out in the Code. So, we ask localities to report cash proffers collected and expended. We also break down the expended categories, as you can see listed above. We did not change the survey format because we were collecting data on cash proffers that occurred prior to the new cash proffer legislation being enacted. This year's response rate was 98 percent. We just had one missing response from a county that previously had not reported receiving or expending cash proffers. We tried several times, and we just didn't think that it would alter the results since they hadn't been reporting in the past.

- Based on the results from our most recent survey, of 162 localities that are required to report their acceptance of cash proffers, 43 or 26.54 percent reported accepting cash proffers during fiscal year 2016. Collections from fiscal year

2016 total over $99 million, which is the highest amount ever recorded. For expenditures, it was $7.86 million, also the highest ever recorded.

- **Laura Lafayette:** Mr. Chairman, may I ask a question?

- **Marshall:** Sure, absolutely.

- **Lafayette:** So the results that we're seeing here are, by and large, prior to the enactment of the proffer legislation.

- **Dahlman:** Correct.

- **Lafayette:** Okay. So this is a reflection of the rebound of the industry and then prior to the new legislation going into effect. Thanks.

- **Dahlman:** Correct. Cash proffer collections and expenditures have fluctuated over time. This visual representation shows cash proffer revenues in the dark blue and expenditures in red by year since the report's inception. As I mentioned earlier, the fiscal year 2016 collections and expenditures were the highest recorded. We see a drop after 2006 in expenditures. Again, that's the red bar. And it rises at a slow pace, only surpassing 2006 levels in the current fiscal year 2016 that we have the data available for.

    - For revenues, they fluctuate frequently. They have the steady increase and then have lows in 2009 and 2011, as you can see. Revenues do not surpass 2005 and 2006 levels until 2013. Overall, as seen by the trend line, though we have seen an increase in both our revenues and expenditures with collections, we have a slightly higher rate than expenditures over time.

    - Just to show a little bit more comparison, we averaged out the revenues and expenditures from fiscal year 2000 and fiscal year 2016. As of the current fiscal year 2016, the average annual statewide revenue collection was approximately $77.9 million, while the average annual statewide expenditure was $67.6 million. As you can see from this visual representation of the difference from state average over time, in the current fiscal year the revenues were 78 percent above the average and 92 percent difference for revenues above the average—or excuse me, for expenditures.

    - I just wanted to show you a visualization of which localities are currently receiving and collecting cash proffers. They're concentrated in Northern Virginia along the northern I-95 corridor, in the Richmond region, and in the Hampton Roads area. We have a few in the Northern Neck and Eastern Shore area, but most of them are concentrated in those areas of the Commonwealth. And then just the localities that are not eligible to receive at all are just denoted by the crosshatch marks. I know it's hard to see.

- On this next slide, we just wanted to show which localities were collecting the most cash proffers. In Northern Virginia, the highest amounts were collected—$42 million from Loudoun County, followed by Fairfax County with $16 million, and Prince William County with $15 million. The least amount collected with $510 from the Town of Smithfield, followed by the Town of Broadway with $2,000 collected. So quite a difference.

- We include this map just to compare cash proffer collection to the total housing units added to a locality. The map includes growth and number of housing units starting in 1990 when cash proffers were formally enacted into legislation. We only have data available up until 2014 from the U.S. Census. There are many reasons for the rise in housing units in a locality over time. This map only paints one part of the picture, but I just wanted to show you some similarities between which localities are collecting cash proffers and also where the highest numbers of growth, in total number of housing units, have been added.

- Loudoun County has the highest percentage change in total housing units. It's a 251 percent change. Spotsylvania County follows them with the second-highest percent change at 123 percent. Both of these counties accepted cash proffers in fiscal year 2016. The top five highest in percentage change are Loudon County, Spotsylvania, Stafford County, Manassas Park City, and James City County. All five of those were collecting cash proffers in the past fiscal year.

- **Dicks:** Question, Mr. Chairman.

- **Marshall:** Yes.

- **Dicks:** Thank you, Mr. Chairman. That's very interesting information and very useful. You kind of mentioned that really shows only half the picture. Assuming that we're going to do this on an annual basis, maybe you can put in a map next year that shows the net growth in actual housing units. You see that Fairfax County is kind of low there in the gray with the one percent to 50 percent. But even a one or a five percent increase in Fairfax County is going to result in many more housing units than almost anybody else on that map. So I think it would be useful to have that. This one is great; it would also be useful to just go ahead and show the sheer number of housing units, because that's what's actually generating the increase in proffers.

- **Male:** While we have a wish list, I would like to see a list also—because we're talking about units, which I assume is a house. I'd like to see the value of those houses.

- **Dahlman:** The value? Sure. And also I would like to point out that these numbers on this map are single-family and multi-family housing.

- **Marshall:** Question.

- **Delegate Betsy Carr:** Thank you, Mr. Chairman. So there might be a number of units in an apartment that you're showing.

- **Marshall:** That was a question. So a condominium project or a townhouse or something, it's each individual unit where a family would live. It's not the whole project.

- **Dahlman:** Yes. We took it from the decennial census and also the American Community Survey as well. We combined both of those together.

    - I just wanted to break down the expenditures to show you just a little different visualization here. For the past year's report, the largest expenditure category is roads and other transportation, which account for 50 percent of the expenditures. Schools follow that at 15 percent and parks at 15.5 percent. Just to reiterate, the total expenditures of this past year are $72.8 million. The categories that we show up here are directly taken from the Code. This is a breakdown based on our survey and what's spelled out in the Code.

    - I also broke down this chart by categories that would likely still be in compliance with the new cash proffer legislation that was passed. So, the pie slices highlighted in yellow—I know it's hard to see—would still be likely to be applicable, which are roads, schools, parks, and fire/rescue and public safety.

    - For fiscal year 2016, the expenditures that are likely in compliance account for 84 percent of the expenditures. The remaining 15.7 consist of the follow categories: libraries, water and sewer service extension, community centers, stormwater management, special needs housing, affordable housing, and miscellaneous.

    - One more visualization here. We just did a historical breakdown on expenditure categories. Over time, the major categories for cash proffer expenditures for each fiscal year include schools, parks, and roads. Expenditures on roads and parks and recreation increased significantly during the past year's report. And then data on categorical spending for fiscal years 2000 through 2002 was not collected, so we do not have those figures for those years.

    - Additionally, I just want to show you historically the breakdown of categories that are likely to be in compliance with the new cash proffer legislation. Over time, more than 50 percent of expenditures each fiscal year have been in compliance with the current statute, 15.2-2303.4. The ranges go from a low of 66.7 percent in 2012 to a high of 94.8 percent in fiscal year 2004 that would be likely to still be in compliance with the new legislation.

    - Just a couple of comments about the recent legislation passed. The data from the survey, again, as you asked beforehand, was collected from fiscal year 2016, meaning the results are revenues and expenditures that occurred prior to the legislation being enacted. In addition, localities do have 12 years to start

projects. So we may not see the full ramifications unless there are amendments. We may still see a little bit of expenditures in some of the categories that are likely to not be in compliance. But as I just showed you from the last slide, pretty much more or less, more like 60 percent over the years have been in compliance, so we'll just see more of a shift toward roads, schools, and public safety.

- What we do know from news articles and anecdotally is that localities are updating their cash proffer policies and regulations to be in compliance with the new legislation.

- Any questions?

- **Marshall**: Let's see if we have questions of Commission members. Yes?

- **Lafayette**: Has there been an effort to have a kind of standard understanding and interpretation of the new legislation? You get a different answer depending on what local attorney you're talking to. So I just wonder if the Commission or local government has had kind of an outreach effort to say This is how we understand the law?

- **Dahlman**: We have not done any outreach of that yet. We haven't really started an initiative either.

- **Marshall**: I think that's why we had the bill. Any other questions? Thank you so much for being here today.

- **Dahlman**. Thank you.

- **Marshall**: Now we'll go to the work groups. Affordable Housing: Delegate Peace.

- **Palen**: Yes, Mr. Chair. We also have Senator Locke on the phone, so if you'd hold on just a moment. Senator Locke, we're about to begin the legislation.

- **Marshall**: Okay.

- **Palen**: And she [Senator Locke] has included a letter to each of you in your packets.

- **Marshall**: Okay. So affordable housing is first on the agenda, and Delegate Chris Peace was the chair of that. So we'll go through that.

V. Reports from Work Groups

1. Affordable Housing, Real Estate Law, and Mortgages

- **Assistance Animals and Rental Property** (Recommended by Work Group, bill in binder).

- **Delegate Christopher Peace:** Thank you, Mr. Chairman.
- **Senator Mamie Locke:** Hey, I'm here.
- **Peace:** I think Senator Locke's on the line. We can hear you, Senator Locke. Thank you.
    - First is dealing with assistance animals and rental property. This was a request of the Commission to look into what have been a number of reports of residential property managers, housing providers, who are often presented with requests for waivers or exemptions from the payment of fees for having assistance animals in their rental residences or even having the animals themselves in their rental property. Assistance animals provide therapy and comfort for certain members of the disabled or impaired community.
    - The request that was made of the work group was that we would consider a path forward to address a problem that has been burgeoning online where businesses have been providing on-demand verification of one's disability without a therapeutic relationship. When an individual makes the request for the reasonable accommodation, they are able to present a credible document from a third-party verifier that says they have a particular disability or impairment that necessitates that assistance animal.
    - We are very concerned and the work group was concerned about the fraud that may exist in that area. The online businesses that really don't have a therapeutic relationship with the individual who is making that request for reasonable accommodation. Based on deliberation of the work group and testimony and evidence presented, the work group has unanimously recommended the legislation in draft form, which is found in your binder under the tab "Assistance Animals and Rental Property, Title Draft Legislation on Assistance Animals."
    - The draft seeks to address the issues that I've outlined in the context of federal fair housing and other existing relevant federal and state laws, regs, and recent guidance that has been promulgated by the state. Again, the recommendation before you was unanimous. There was public comment from the Disability Law Center, as I recall, as well as Housing Opportunities Made Equal. And on the latter, there was pretty strong opposition to moving forward with this legislation.
    - Mr. Dicks, I believe, is present who can answer some technical questions, as he was the central point for drafting of the bill in your binder. I'm happy to make a motion at the appropriate time, Mr. Chairman.

- **Marshall**: The first question is, Elizabeth, we don't have a quorum, do we? I don't think you can count someone on the phone for the quorum. So we make up the rules as we go along? So what we can do for the audience is that we don't vote on bills today. So what we can do is we can get—it's kind of like the Good Housekeeping Seal of Approval here. We can get the Virginia Housing Commission's endorsements for this bill or we can take no action.

- **Peace:** The recommendation of the work group, Mr. Chairman, was to endorse the draft that has been presented in the binder after hearing several presentations and public comment and weighing the problem that exists and presenting this as a solution to that problem.

- **Marshall:** Do we have questions?

- **Carr:** Mr. Chairman, I'd like to put forth reservations in terms of—I've heard from folks as we bring this forth if it could be tightened a bit just because of not having it so broad and creating a chilling effect on disabled people getting the housing. Additionally, if we could have the certification by a Virginia-licensed person who is licensed to give certifications for a disabled person rather than somebody going online and getting it from somebody in California. I would just put forth those reservations or concerns about it as we move forward.

- **Marshall:** And, again, for the public: What we would propose today, there are going to be a lot more bites at the apple because the bill would be introduced either at the House or Senate. It would go to a subcommittee, so there could be recommendations or changes at that time. You have a lot of different steps along the way. If it passes both houses and goes to the Governor, even the Governor can make amendments. Do you have anything specific that you would like to change?

- **Carr:** If we had a licensed Virginia therapist being able to give the certification that the person was disabled and having that tightened up.

- **Marshall:** Delegate Peace, did you all look at that?

- **Peace:** I believe we did. If you have the bill in front of you, it talks about a therapeutic relationship. I think that would address the issues of online. It's hard to have a therapeutic relationship with a five-minute consultation with someone. Off the top of my head—thinking out loud is dangerous—limiting it to a Virginia-licensed provider may have some constitutional challenges or questions related to that. Plus it may be someone who has moved from out of state who's had a relationship with a provider that has the letter. We don't want the housing provider or the rental manager to really look beyond the face of what is presented other than the fact that there would be a therapeutic relationship. Basically, trying to get at that

online issue. I don't know if Mr. Dicks has any other thoughts regarding that concern. I think that is a concern of the work group, but we may have arrived at the best place for that.

- **Dicks:** This is Chairman Chip Dicks on behalf of the Virginia Association of Realtors and the Northern Virginia Apartment Association. If you have the line version of the bill that I have, I direct your attention to line 174.

- **Marshall:** We don't have numbers on ours.

- **Dicks:** It's paragraph D, subparagraph D, and 3696.1.3.1. It should be toward the end of the bill. In paragraph D, about four lines down, it defines therapeutic relationship. And the definition I would present to the members of the Commission is consistent with federal law, the federal fair housing law, and the state fair housing law. What it provides is that you have somebody who is a medical healthcare provider or a doctor of the healing arts, if you will, under state law. And then somebody with an unrestricted state license, like a doctor from Duke University or whatever.

    - And then federal law also provides that a person from a peer group who does not charge a fee or implied financial requirements, and who has actual knowledge of the requestor's disability could also be a therapeutic provider or a third-party verifier. And then the last provision is a caregiver with actual knowledge of the requestor's disability. That would be consistent with the requirements and the various persons under federal fair housing and state fair housing laws that could be a third-party verifier of a relationship.

- **Lafayette:** Mr. Chairman, one other question, if I might. In Subsection F, I guess my question would be Why a misdemeanor? Why not a civil penalty for the person who is misrepresenting their need?

- **Dicks:** Mr. Chairman, I would say to Ms. Lafayette that I don't believe that's in the version 7 draft that was the most recent version that was considered by the work group. So maybe the version that you have in your binder is a previous version that has the penalty provision in there, which was taken out in the last work group discussion.

- **Marshall:** So in the final version, what is the penalty?

- **Dicks:** The final version, Mr. Chairman, since penalties are otherwise provided in the Code, it was the thought of the work group that no additional penalty provision needed to be part of this bill.

- **Male:** That would probably also address any potential fiscal impact a change in that law regarding a new criminal penalty would bring.

- **Dicks:** And Mr. Chairman, I would say in closing that the purpose and the benefit of the last version of the bill, version 7, basically trued-up all of the questions of the little nuances between the federal fair housing law and the state fair housing law and regulations and made sure all the language was identical and that we had those provisions built into the bill.

- **Marshall:** Let's see if we have any other questions for Mr. Dicks. Thank you.

- **Dicks:** Thank you, sir.

- **Marshall:** Do you want to take these as we go?

- **Peace:** Yes, I can just go down the list.

- **Marshall:** All right.

- **Real Estate Disclosures** (No Legislation)

  - **Peace:** The next issue the work group considered was a matter related to mandatory real estate disclosures. House Bill 1264, Delegate Robinson, had an enactment clause that directed the Housing Commission to study provisions of the Virginia Residential Property Disclosure Act, 55-517 et seq., to determine whether the mandatory required disclosures should be consolidated or could be consolidated or otherwise addressed in a more comprehensive way. We get a number of bills each year that add to the list or ask us to consider a change in policy, adding to the list of those mandatory required disclosures. Later in the meeting, we're going to consider another one in that regard.

    - The work group considered the legislation and its directive and makes no recommendation regarding further legislation concerning that mandatory or required disclosure.

  - **Marshall:** Any questions? Okay, thank you.

- **Impact of Tenant Bankruptcies on Landlords** (No Legislation)

  - **Peace:** Next was the impact of tenant bankruptcies on landlords. Senate Joint Resolution 89, by Senator DeSteph, brought forward a unique and interesting issue where there are situations where tenants declare bankruptcy. And it prevents landlords, property managers, and others, from pursuing all available remedies in the event of a breach of a rental agreement. This often leads to a tenant to remain in possession of that property and sort of protected in that regard.

    - We explored the options as the resolution had asked. I believe it was tabled in the Senate but referred to us to explore what potential actions

would be considered to remedy this inequity. There was no recommendation by the work group, but I understand that this is an issue that we want to continue to monitor and get information on going forward. But no formal recommendation in terms of legislation for the 2017 General Assembly session on this issue brought by Senator DeSteph.

- **Marshall:** All right, any questions? All right, let's go to one that should not take too much time.

- **Peace:** I don't know if Senator Locke's going to do hers from the phone.

- **Marshall:** Let's go ahead and do short-term rentals while you're on a roll.

- **Peace:** I'm on a roll. Very good.

2. Short-Term Rentals

- **Peace:** Thank you, Mr. Chairman. Thank you for the privilege of chairing this work group. It was the highest honor.

- **Marshall:** Well, thank you so much for your 12 hours of blood, sweat, and tears.

- **Peach:** Twelve months. I also want to thank the work group members because their seat time and endurance was significant. I thank all who participated, both the membership, actual legislators, others members of the work group, members of the Housing Commission, those in the public who attended the meetings, certainly staff put a lot of hard work into the endeavor. I think all would agree that they learned a lot about the issue, learned a lot about the complexities that are presented. And I think that what we have, the option today, is to continue to advance that conversation.

    - We have done significant due diligence—as the Chairman referred, over 12 hours of hearings. We have embraced, or at least heard, how we might as a state embrace the sharing economy and the important role that Virginia may play in this particular question in the nation.

    - I would say for members of the Commission that we've made progress based on the charge that the enactment clause on Senator Vogel's bill presented us for consideration. The work group actually approved and forwarded for the Commission's consideration several principles that any bill on this subject would address and would need to address sufficiently in the General Assembly session upcoming. I imagine there will be a number of bills—or certainly the potential for a number of bills—to be introduced. So the work group, given the time that we had, forwarded certain principles as a three- or four-part test that those bills would have to be judged by.

- To that end, there's a draft in your binder, which is not necessarily a reflection of consensus of the work group, but it was an attempt that counsel has made to further the policy, the issue, and the conversation that we've had for the past year.

- I want to thank Lisa Wallmeyer and Elizabeth, publically, for their hours of dedication. I know counsel has done a valiant job to try to bring some cohesion to disparate parties and interests and the various stakeholders that have manifested over the past 12 months or so.

- I know that this Commission works by consensus. I know that Chair really hopes that that is the case in anything that we might recommend to the General Assembly. My perception is that local government will be the one stakeholder that would be reticent to any embracing of any principles at this time. I think they're just simply opposed and want local control over that issue, and we respect that and understand that position.

- In terms of the principles that were outlined, Elizabeth does a great job. We record all of our sessions, and then she transcribes minutes. It's quite a voluminous set of information. But just to try to distill it down to its most simple form, in terms of the principles that the work group analyzed and moved forward for recommendation would be that any legislation would apply to all types of properties, statewide policy, but differentiate between properties using a tiered system regarding primary and secondary residences.

- The other statewide component would be the central tax collection and remittance to localities. And there would be a local option for ministerial registration. That's in response to repeated requests for information from the local government to know where this activity is occurring and taking place. And I think that's actually a very reasonable request on behalf of localities for a ministerial or de minimis registration requirement. To that end, we would also, though, have an exception for licensed realtors who are in the trade—that was a specific request of industry—and also the property managers who deal in that same type of commerce.

- So really sort of distilling down, if I can, to the simplest—a three-part test would be as I've stated. That would be what I would hope that we would consider in terms of a recommendation. Whether we have a quorum or not, the sense of the Commission would be that we would want a statewide solution to the problem, and it would contain those elements. If anyone gets the clips, every day I feel like there's a different question, conundrum, issue raised in a different part of the state. And I think we're just going to get to the point where it's going to be hard to discern and difficult for the market to have any success in any uniform way.

- So, Mr. Chairman, I present that as a summary report of our work and thanks for all those who contributed and participated along the way.

- **Marshall:** Thank you, Delegate Peace, and the people who served on that. I think this kind of shows why we have a Housing Commission. We had this bill that came forward. If we had to try to get this done in session, it would just never happen. I'm not quite sure it's going to happen now, but at least we had 12 hours of thought about this. Could you go back to those three to make sure that we're all on—

- **Peace**: Yes, three or four. Mr. Chairman, there needs to be a statewide solution to this issue. And that solution would apply to all types of properties and differentiate between properties using a tiered system related to primary and secondary residences.

  - There would be a central point of tax collection. We heard from Tax. They're very comfortable with the software. They're very comfortable with how the process would work. That has been the case since January, in terms of the position of the Tax Department.

  - Then there would be a local option for a ministerial or de minimis registration requirement for those conducting that commerce in a particular jurisdiction to that local government. There would be small exceptions for a licensed realtor and property managers. It really would capture the individual who says For a few nights a year, I would really like to make a little extra money and let my residence to someone using the online platform, which most commonly is known as Airbnb, although there are others.

- **Marshall:** Let's get a little bit closer. Instead of 30,000 feet, let's go to three feet. So, the statewide solution. Talk to us a little bit more about that. How you see that? Define that a little bit closer.

- **Peace**: Mr. Chairman, I would say it would be like any other legislation that we have in terms of applicability, unless there are exceptions or carve-outs or we're directing it only to particular jurisdictions. We've seen where that can be problematic where we get the Christmas tree effect. Each jurisdiction wants to join a particular regime that has been embraced by state lawmakers. And it wouldn't solve the problem of the effect of Commonwealth where everybody is treating this particular industry in a different way. There are a lot of analogies made to Uber, and I think that's probably warranted in one respect in terms of the sharing economy. But in terms of practical implementation, we have DMV as a central contact. In this case, the analogy may be more on Tax for that purpose. But in terms of land use and other issues that are local in nature, we have over a hundred jurisdictions. So to apply evenly and across the board a set of standards that would govern this particular industry and this activity in the Commonwealth.

- **Marshall:** The next was all types of property. Explain the tiered system.

- **Peace:** I think that's to be determined to the extent that there is such an infrequent activity or such infrequent transactions that many in the work group believed that it shouldn't require any reporting, any type of registration. Then there is a step up from that, which would be dealing with other periods of time. And then there's one beyond that for greater periods of time. And then there are the different types of residences.

    - If the commissioners will recall, my legislation in the House, which passed the House, dealt only with primary residences. But there were concerns raised from various parts of the Commonwealth that we wanted to have some governance over the secondary residences or vacation homes, particularly in the Virginia Beach region. There were other parts of the state that were also represented.

    - That, I think, is something that can be worked out, but you have to get through the first question, which is whether there should be a statewide policy that should apply in all circumstances in all jurisdictions.

- **Marshall:** Okay. Then central tax collection. I assume that we're talking about either a county or a city or even a town would collect, and then they would make the payment.

- **Peace**: That would be what the local governments would prefer. Based on the nature of this enterprise, a central remittance to Tax and then distribution from that central point back to localities pro rata based on the level of activity occurring in those jurisdictions. There is certain software that can be tested that we had presentations on by Mr. Mark Haskins that the Tax Department is comfortable with, and it's very similar to how retail sales and use is collected and then sent back to localities based on what they are properly owed. So the platform would essentially collect the tax at the booking registration, and those are technical terms. But essentially take that portion and send it to Tax; Tax would send it to the localities.

- **Marshall:** And then finally, local option. Explain how broad that is.

- **Peace:** The local option would be kind of going back to the tiered concept where there would be ministerial registration based on the frequency of the activity in a particular residence, in a particular dwelling. So if someone is doing it several weeks of the year, that would trigger the registration. And that's in response to local government's concern that these are things that are happening too often in their minds, and they don't know where they're happening until something is reported to law enforcement or there's some other concern for safety or welfare, etc. This may be more my personal view, but I think it's the sense of the work group that a ministerial registration is certainly reasonable in that regard.

- **Marshall**: What the short-term rental work group is asking or requesting is a little bit different than policy in the past for the Housing Commission. You're not asking us to move this bill forward; what you're asking for are those four bullet points to go forward as a recommendation of the Housing Commission that any bill that passes the House, passes the Senate, and goes to the Governor would have those four bullet points in it.

- **Peace:** That's correct.

- **Marshall:** Okay. Questions. Yes, David.

- **Delegate David Bulova**: Thank you, Mr. Chairman. This is kind of a question directed at Delegate Peace to help me get a sense of where I want to go today. I guess, first, let me just say this is a really good process, and I want to congratulate Delegate Peace on organizing this. It was 12 hours, but it was 12 hours well worth participating in, and I very much appreciate that.

    - What I would like to see happen is to make sure that the process doesn't stall. I see great utility in making sure that the stakeholders continue to focus and move forward with the possibility of coming up with a resolution during the '17 Session. I guess where I'm struggling is whether my concerns can be reconciled with the four principles that have been laid out. And so that's kind of the question that I wanted to go ahead and pose to you.

    - I do see utility in some kind of statewide framework. I think that would be very, very helpful. I see utility in the hosting platform collecting those taxes, both as a service and also to make sure that you're not presenting liability for those who might not be as diligent about collecting and submitting those taxes to the localities. I do remain very concerned about remitting those up to the state level and then having those come back to the local level, both from an enforcement standpoint and also an accuracy standpoint. And my commissioner of revenue has expressed on numerous times frustration with the existing system where people get confused all the time between Fairfax County and the City of Fairfax. So I wanted to see, number one, if one of the principles you had in there, whether that is something that could still be considered and accommodated.

    - The other part is that I do remain concerned about the infringement on local zoning authority. I'm not sure to what degree we can still work within those parameters. I actually kind of like where the bill that came out last Friday went where it was a bifurcation between the de minimis and then everything above those 14 days you could continue to go ahead and regulate just like any other zoning use. I know that *14* isn't a magic number, but I thought it provided at least a bright line. And I know local governments aren't completely happy with that, but it seemed to be headed in the right direction.

- With that Mr. Chairman, I'd love to get a response from Delegate Peace about whether those concerns can be accommodated within that policy framework, because I do want to see the process continue on. I don't want to shut it down here.

- **Peace:** Thank you, Mr. Chairman and Delegate Bulova. You're always a very valued member of any body that considers housing policy. And I speak from experience on our subcommittee and General Laws in the House. Always raising very important questions for our consideration. And thank you for embracing a statewide framework.

  - I think the concept of the ministerial registration and the concerns that you raised from your local government about accuracy will work in tandem as you're able to remit to the Tax Department and then have that delivered back to the locality. When you're above a certain number of transactions, if you will, if the frequency of days is triggering that registration there will be a way to kind of understand how that lines up with the taxes that are collected and then sent back. I can assure you that the Tax Department wouldn't mislead us in the sense that the software that's used is well respected nationally. It's one of the Cadillacs of software that allows for that to be conducted.

  - I think that going to our statewide concept as well, having that central point of tax collection and remittance back to localities, furthers that type of commerce and makes it easier for those who have hosting platforms to be able to link up with actual hosts to provide that service.

  - I think that your concerns are certainly well taken. But I think that the principles actually really address many of those concerns, if not all of them.

- **Palen:** Mr. Chairman, Delegate Knight would like it on record that although he's not here today that he is in favor of registration at the local level and throughout the state, but he wants zoning and taxes also to remain at a local level.

- **Marshall:** Okay, thank you. Other questions? George.

- **Senator George Barker**: Mr. Chair, as the person who made the motion at the last work group meeting on this, I'm trying to recall everything that was built into that motion. I think we do have the framework that has been laid out here and was laid out in the submission that we got from Delegate Peace.

  - But I also recall, if I'm correct—I want to make sure I'm correct—that we had asked the stakeholders to continue to meet to see if they could come up with something that they could all agree with that would be consistent with these principles. I assume the fact that we have not heard that there

has been success on that means they may well have met, but they have not reached agreement on things. I just want to make sure that my interpretation, inference there, is correct.

- **Peace**: Mr. Chairman, Senator Barker, you are correct. That was the directive. And Ms. Wallmeyer did a great job to try to advance that conversation. But the bill that was put in your folder does not represent consensus among stakeholders in terms of peace in the valley, but certainly is part of the conversation going forward within the structure that the work group has outlined. I'm hopeful that that will advance this conversation.

    - I shared with the Chairman earlier it was interesting to have worked with some of the stakeholders who at the beginning were extremely opposed to any legislation who now really want legislation. And then there were those who really wanted legislation who are okay with no legislation. That seems to be the art of a good negotiation, right, if everybody's unhappy or otherwise.

    - So I think that we are moving forward. And the motion that you made in the work group and outlined in these principles, I think, will stand us well in the session to judge any draft or bill that's filed.

- **Barker:** Just a quick comment, Mr. Chair, if I might. I think what is outlined here is a proper step forward. I think what we need to do is rather than coming up with specifics today is see if the stakeholders can reach agreement. My assessment of things is they're not as far apart as many people thought they would be at this point. So I think it is certainly possible to reach a compromising consensus on things. I think the issues surrounding primary residence, secondary residence, the de minimis, and the tiers, those are the critical things that need to be worked out. And I think those can best be worked out among the stakeholders. Obviously, if they don't do that, we'll have to step in and take that on. But I would certainly love to see them take a crack at it and see if they could reach agreement on that.

    - One of the concerns I had about the draft here is it sort of started at one end of the spectrum, and there's a lot more that could be concerned. For example, it lists a de minimis use as only for primary residence for 14 days so that someone who has a vacation home and they want to use it once a year would not even be covered by a de minimis. And also I think there are certainly events—the cycling championships that were here, the marathon that's here in November—where there are people who might be willing to participate for some special event like that but would not be regular users. I think we need to be able to provide options and protections for those.

- **Marshall**: Thank you. Questions? Yes, Senator Stanley.

- **Senator William Stanley**: First, I guess, partly a statement and partly a question. And if I may, Mr. Chairman, I thank you for your time. And certainly I thank Delegate Peace for the hard work that he's put into this. And I know there have been some trying times. I wish I could have been involved in more of the work group. They always seemed to be scheduled when I could not be there. I don't know that that was intentional after my first appearance.

- **Barker**: There would have been more trying times if you were there, I think.

- **Stanley:** And certainly I want to thank Ms. Wallmeyer on a great effort. I looked over the transcript. We certainly have e-mail exchange. And I looked over the transcript and thought she captured as best she could exactly where at least Senator Barker was. And of course nothing is perfect, but I think with this all being all over the map every now and then, I think she did the best she could. I'm actually pleased with her attempts here. As much as I have concerns about Airbnb and this type of sharing economy issue, I certainly think that this bill gives me the least amount of agita that I've had about this issue.

    - My concern is, Mr. Chairman and members of this committee, is that without a consensus—and as we're seeing right now in certain jurisdictions including Arlington most recently—we have some localities that are passing, and I think enacting, acting upon the powers that we give them with relation to zoning and land use and the like. My concern that I have is that this company has shown itself—Airbnb, in particular—to engage in a particular course of aggressive litigation in cities such as San Francisco and New Orleans and New York City, suing those local jurisdictions when the local jurisdictions put in place certain regulations that the company does not like. And in doing so, dragging them through that litigation at a cost.

    - These larger cities such as San Francisco and New Orleans, Mr. Chairman, can certainly maybe bear the cost of a legal challenge. I'm concerned that our jurisdictions like Arlington and even Franklin County or smaller jurisdictions that put in reasonable regulations at this time, if there is no bill, will then be subjected to the litigation tactic. I think they probably have done a risk analysis, as they mostly do, and have decided that on a cost benefit this is much more in line with their belief in their business model, so we're going to see that litigation while we try to work this out.

    - I would think that totally unwise on the part of the corporation, but I have seen them take actions that have been, I think, counterproductive, including but not limited to, Mr. Chairman, the fact that this city right here that we are sitting in, the City of Richmond, does not allow for such short-term rentals, and this company continues to flout the law, even having a button on their platform that allows you to rent through Airbnb a place in Richmond while it is illegal. I do not believe that any corporate model or

corporation should promote or support criminal activity or ignore the law. That is one of my biggest concerns that I've seen in doing this.

- Maybe their belief is, Mr. Chairman, that we in the government are creaky and slow, our machine works slowly, the wheels turn slowly, and therefore we must catch up to them and submit to them rather than they making sure that they comport with the traditions, laws, and values of the Commonwealth of Virginia.

- That is one of my concerns in Arlington, quite frankly. I think if everybody was happy with the Arlington model, if Airbnb was happy with that, then maybe we could even make progress on that. But what I'm to understand is that even though an Airbnb representative said publically in the newspaper that they were satisfied with the Arlington result, I have then, in fact, heard that that is not a model that they want repeated anywhere else.

- No legislation right now. What we're talking about is makıng a recommendation, Mr. Chairman, that the four points that Delegate Peace has made should not be the only ones. I think there needs to be some acknowledgement that we as a state government under the Dillon Rule limit what our local governments can and cannot do and sometimes tie their hands in terms of revenue generation or regulations. Zoning laws, land use, health and safety issues we've left to the province of those localities to make determinations for themselves. There may be many more points than the four points that we've talked about that should be explored in recognition of, really, the rights of those local governments to make determinations based on the citizens that they serve at the local level.

- I'm reminded that I like to say sometimes about this issue if I wanted to live next to a hotel, I would have bought a house next to a Marriott or Holiday Inn. There are those out there who are neighbors of people who are renting an Airbnb who probably don't like that and worry about their home values.

- What we must always remember, Mr. Chairman, is that my property rights, like my civil rights, end where Delegate Peace's begins or my neighbor's begins. And sometimes we understand that there is a reason for zoning that respects that, that when people move into a quiet neighborhood, that's where they want to move into, not a commercial district. They want to know their neighbors. They want to raise their children with at least some feeling of safety not of some person coming in that they don't know that possibly could harm not only their quiet tranquility but also their children.

- So I think there are more points that need to be done, that need to be looked at, Delegate. I think, in addition, we have to look at issues of liability. I have asked over and over, Mr. Chairman, for the liability policy that they offered so freely. When I guess I was cross-examining Airbnb's representative a little too tough, she offered this liability policy. I've asked for it. I've e-mailed and asked for it. I've never gotten it.

- I think this state owes this level of protection and that's to protect the consumer. And the consumer comes in two varieties. One is the person that uses the platform to rent their residence, Mr. Chairman, but also the end-user who comes and rents that place as well. I'm telling you right now I bet the insurance component of this, no insurance company provides a packet of insurance—I have rental properties in Charleston and Wintergreen that I have commercial lease and liability that your homeowner's policy is not going to cover. Or at least the homeowner who may be wronged or the person who is wronged in the home, when they seek insurance coverage will find that that insurance company has filed for a reservation of rights or had denied coverage because they weren't contemplating the relationship created by this platform of Airbnb. That protection is not there. And without knowing what kind of liability protections through insurance is there, I have certain concerns that have not been answered.

- Finally, one of the questions I asked, Mr. Chairman, during the work group was if Airbnb collects $100 or a person's renting out their room for $100 and they encourage them to collect the taxes, and so the taxes let's say are 10 percent, so it's $110. What is Airbnb's fee? Airbnb takes a fee, a percentage from—and they said not the 100 but the 110. Thereby, they were taking a percentage fee from taxes, taking a slice of what is money that should be returned to the locality. I don't have any assurances that that's not going to be the way, even in this draft, that the collection of the taxes won't be taxes minus their fee on the top of the taxes.

- Ultimately, Mr. Chairman, I think we need to make sure that we're paying more attention to the locality. I think, ultimately, what we need to do is we need to make sure that this industry understands and respects the law as established at the same time that we try to modify it to accommodate this new industry. If it is not willing to do that, Mr. Chairman, then I am unwilling to ever believe that we stand in any position to accommodate them to their liking and otherwise subject ourselves, our Commonwealth, our people, and our localities to ridiculous litigation because as a petulant child they did not get their way.

- And I thank you, Mr. Chairman.

- **Marshall:** Thank you, Senator Stanley. Any other comments? We understand now why it went 12 hours. There is a lot of passion about this.

- **Mark Flynn:** Mr. Chairman, this is Mark Flynn for the record. Before I start, because I lecture on the Conflicts Act and write about it quite often to the extent that some call me Father Flynn at times, I probably should do the certification required by Section 2.2-3114(f), and that is that the transaction of Airbnb or the short-term rental, the nature of my personal interest is that I represent the City of Richmond, Prince William County, and Chesapeake. And those represented in the localities, I'm part of a group of three or more. I do certify that I can participate in the transaction fairly, objectively, and in the public interest.

    - With that disclosure aside, from the local government perspective—and I would ask if Elizabeth could hand out a letter from the City attorney for Fredericksburg—it actually captures the local government perspective very well. And I thought it was just useful, and it doesn't take that long to read.

    - On the tax part, the central collection, I think there's probably—and this is me speaking—some room to maneuver there for sure. But the issue is that the state Tax Department, this isn't their tax, and they're not going to have the real incentive to do the auditing required to make sure for a given locality that the taxes are reported and paid accurately. As a result of that, if there is a central tax collection—and that's a matter for discussion—the local tax official, usually the commissioner of revenue, should definitely have access not to some anonymous number, but access to the actual information where it's that commissioner's responsibility to determine whether local taxes are being collected and paid. So that's one part on the tax, that there needs to be access to the information.

    - On the land use part, I think that there certainly is some room for the de minimis activity where it would be treated in something of a ministerial manner like a home occupation permit. That's in my experience as a local government attorney. It's just looking at what's the impact on the immediate neighbors. That's really what it's all about. It takes no time and doesn't really cost much money.

    - I think local governments are very much willing to move forward in working on trying to come up with a solution that does workreally have some concerns, some of which Senator Stanley expressed and Delegate Bulova expressed. Very much the same thing. Thank you.

- **Marshall:** Okay. Other questions or thoughts? Senator Locke, you have a comment?

- **Palen:** Senator Locke?

- **Marshall:** Okay. Do we have Senator Locke on the phone? Does she have a comment?

- **Palen:** Did you have a comment on Airbnb that you wanted to share?
- **Locke:** It's in the letter. I can barely hear.
- **Marshall:** Well, we can hear you fine, so why don't you tell us while we have a few minutes, if you'd like to, about what your letter says.
- **Palen:** Did you want me to read the letter to the Commission?
- **Locke:** Yes.
- **Marshall:** How many pages is it?
- **Palen:** On behalf of Senator Locke: I'm sorry that exams at Hampton University prevent my attendance at the Virginia Housing Commission meeting on December 14, 2016. I know this is an important meeting with several matters to be decided before the start of the session.
- **Palen**: I did want to share my thoughts on the Short-Term Rental Work Group. I've spoken to local folks in Hampton and Newport News. This includes local government representatives, as well as local B&B and Airbnb operators. All are in agreement that short-term rentals should be under the purview of local government for zoning issues, permitting, as well as for taxation.
    - My constituents specifically noted the current Airbnb-listed accommodations are not held accountable by the Health Department, the Fire Department, Code Compliance, and they don't pay any related fees. There should be equity and fair competition on the playing field.
    - Further, short-term rental owners are not promoting tourism and hospitality. They should be legitimized through certification so that a vital tourism market is accentuated.
    - It is my understanding that San Francisco, the home base of Airbnb, now has, or soon will have, the technology to assist local governments with registration and reporting. This is great news and should be the same in Virginia. That is, universal registration of all short-term rentals, including occasional rentals at the local level.
    - Commissioners of the revenue or local finance directors should have the same financial audit capabilities here as they have under existing law for other businesses. Registration will readily facilitate zoning and other laws that protect the public health, safety, and welfare. This is a fairness issue to me, as currently any home-based business has a registration and a taxation requirement with the local government.
    - Likewise, I think the short-term rental companies should agree that they will de-list and enforce compliance with bad actors. This will help local

government immensely and keep all the good actors doing the right thing and hopefully continuing to be successful.

- I do understand that there are many short-term rental or Airbnb-type operators that are managed by a licensed professional or a licensed bed and breakfast. I feel strongly that there should not be any additional registration requirements on these operators.

- Regarding the issue of taxation, I'd like to see local taxes collected at the local level. This makes sense to me and does not seem particularly onerous as other national franchises have figured it out and do it routinely. Should it be the consensus of the Housing Commission to authorize state collection of local taxes, local governments should have the ability to audit at the local level. Further, some sort of kill switch and trustee language should ensure that localities get all the local tax dollars due them.

- Again, I'm sorry that I cannot be there today in person to share these concerns. I trust that this note represents my feelings on these issues or, more importantly, the feelings of those I represent.

- Thank you very much. Sincerely, Mamie Locke, Senate District 2.

- **Marshall:** Elizabeth, ask Senator Locke if she has any additional comments.

- **Palen:** Senator Locke, do you have any additional comments for the group?

- **Locke:** No, that represents my feelings on the matter.

- **Palen:** Thank you very much.

- **Marshall:** Do you have any questions? All right, moving forward then. Do you want to make a motion?

- **Peace:** As the chair of the work group, I don't know if we treat it like a subcommittee as we're in session where the recommendation of the subcommittee work group is the motion that doesn't require a second. Or if Senator Barker, who made that motion, would renew that now. That may be more appropriate.

- **Barker**: I'd be happy to renew the motion that I made at the last meeting of the work group, which would be to incorporate the points that have been outlined and to encourage the stakeholders to work to find some compromising consensus on things to provide a specificity to enact these.

- **Marshall:** Let's make sure we know what we're voting on. What the recommendations are—as we talked about earlier—is that what you would ask for, Delegate Peace and Senator Barker, is that a recommendation would come from the Housing Commission that any bill would have—and I'll mention them

here in a second—we are recommending any bill to have these four. We can't tell people what to do, but what we're doing is a recommendation. So that's a statewide solution; all types of property; that tiered system we talked about; central tax collection; and a local option for the registration.

    - In the House, if they happen to go to—the bills will go to the subcommittee that you chair.

- **Peace:** I don't want to presume to know the mind of the Speaker of the House.

- **Marshall**: That was going to be the next question. In the past, these bills have gone to your subcommittee, so if a bill were to come forward that did not meet this, would that bill not receive favorable consideration?

- **Peace:** I don't want to bind members, either, but knowing that Delegate Bulova serves on that subcommittee as well, and if Chairman Gilbert were to refer that bill or bills to the subcommittee, we would have to have a hearing. But certainly would articulate the sense of this Commission and demand as much as possible that we would incorporate those principles in any bill that would be recommended for reporting out of that subcommittee. And I would believe that the Senate would operate in like fashion.

    - I know that we heard the comments passionately articulated by Senator Stanley for safety and health concerns. I don't think that these principles are exclusive. In other words, it's really more including, but not limited to, in that sense. But this is a foundation or baseline that we would like to see in anything.

- **Marshall:** Okay. So let's get this on the table here. You made a motion that this is four principles that you would like to recommend that would be in any bill. Correct?

- **Stanley:** Yes. Those along with things such as recognizing the limitations such as [unintelligible] documents, those types of things so that it does not attempt to supersede those.

- **Marshall:** All right, do we have a second?

- **Male:** Second.

- **Marshall:** We have a motion and a second. Any discussion?

- **Peace:** Mr. Chairman.

- **Marshall**: Please.

- **Male:** Mr. Chairman, my question with the motion on the floor, it sounds like to me that these four principles—and I don't know if it's including but not limited to as part of that language, which certainly I think we should not hamstring ourselves to just these four issues. But it seems implied in the recommendation without stating that by voting for this, it would be this Commission's recommendation, basically, that such localities could not severely restrict and/or prohibit Airbnb-type companies from operating in their jurisdiction. Am I correct, sir?

- **Marshall:** You're asking the wrong one. Let's ask Delegate Peace.

- **Peace:** Not speaking for the person who made the motion, but speaking for him, I would say that it would open the door that this would be permitted activity across the Commonwealth, but with a certain structure in place to govern it in a uniform way.

- **Male:** Mr. Chairman, further question.

- **Marshall**: Yes sir.

- **Male:** So this would only be parameters and limitations by which the locality could limit and/or regulate the industry, but could not otherwise prohibit. Am I correct?

- **Peace**: I would say so.

- **Male:** Thank you, Mr. Chairman.

- **Marshall:** Okay. Delegate Bulova.

- **Bulova**: Thank you, Mr. Chairman. I guess let me preface that I want to vote for something in an affirmative way because I think that there is utility in what we're doing. I also want to keep my options open. And I'm a little nervous about the four principles. I want to kind of express support for some kind of statewide structure in a very broad sense, a desire to continue to move forward with the stakeholders, but not necessarily to limit ourselves to any of those four principles. And so, I guess depending on how this initial vote goes, I might be voting now to keep my options open. But if we have another round, I might put that on the table, which I think does keep our options open, but also gives us at least a direction forward.

- **Marshall:** Well, this is a crazy place. I was actually a co-patron of a bill and then voted against it. George?

- **Barker:** Mr. Chairman, just to provide clarification on one point. In making the motion, I was in no way attempting to limit what's in a final bill to just these

topics. And certainly the types of things that Senator Stanley and others have raised certainly could be incorporated in a final bill.

- **Marshall:** On the Senate side, I assume it goes to General Laws also.

- **Bulova:** Mr. Chairman and members of this committee, I would assume that this is going to come to Local Government, which I am the Chairman of.

- **Marshall:** Uh-oh.

- **Bulova:** In fact, that's where it went before the patrons asked it to be referred to General Laws last year. I don't know that I would accept such a request at this time.

- **Marshall:** So why did we have this whole discussion?

- **Locke:** Elizabeth, I have a question.

- **Marshall:** We have a question from the phone.

- **Palen:** Go ahead.

- **Locke:** Okay. What's being proposed is legislation that would create a statewide option. Is that correct?

- **Marshall:** It's not legislation.

- **Palen:** I believe what is being proposed are some concepts. And yes, you are correct. It would provide a statewide option on some of the topics.

- **Locke:** Okay. But the statewide option, taxation would be collected how?

- **Palen**: I believe that's still under consideration, but it would be through the Department of Taxation and then through some sort of safe box given back—kept in the state government and given back to the localities.

- **Locke:** Okay. All right.

- **Marshall:** Other comments? You made the motion, so you want to go forward with the motion?

- **Barker**: Yes.

- **Marshall:** All right, so we have a second and you want to go forward. Any further discussion? Yes.

- **Female**: Review for me again the options for the localities here.

- **Marshall**: You made the motion, so, George.

- **Barker:** Yes. The options for localities, the localities will receive the taxes. They will be collected by the entity providing the hosting platform, and then will be distributed to the appropriate localities through the normal processes that the state uses in these types of situations.

    - The locality has the ability to require ministerial registration. The locality, depending upon what's developed, may have additional authority related to tiers so that those operators who lease this out on a regular basis are affected differently, and the localities have more ability to control them than someone who's using it very infrequently. That's to be determined because there are no specifics in there right now.

    - And the localities have the ability to enforce their existing zoning regulations in the various neighborhoods on these entities just as they would they would the property owners themselves. So they could continue to do that.

    - Some of the types of things that we heard that are egregious activities that would not have been permitted by someone who was a homeowner, disrupting an entire neighborhood, would also be prohibited by a locality for these operators as well.

- **Palen:** Senator Barker, can you please clarify. Did you mean localities can enforce existing zoning regulations? Do you mean by that that they could not have further zoning regulations?

- **Barker**: That certainly needs to be worked out. But one of the things that was incorporated—there are two different issues that I think are important there. One is I think there was contemplation in the discussion that there might be additional zoning regulations that would be applicable to those people who lease the properties on a very regular basis, so they were running it more as a business rather than just sort of a home or a secondary home or weekend home that they had. I think at the last meeting or the meeting before that, I think it was talked about if they rent it more than 60 days a year, they would be potentially subject to additional regulation that existing residential property is not. So that is certainly an option to be incorporated in a bill.

    - It was incorporated in the draft that Ms. Wallmeyer put together to make sure that they could enforce all existing zoning regulations in those communities. The example that was used was someone coming in to film something in the streets and disrupting the neighborhood and that type of thing. If that's not permitted for the homeowner to do, it's not going to be permitted for someone renting out the home to be able to do that.

- **Bulova:** Mr. Chairman, just for further clarification from Senator Barker on that top tier that he described related to additional requirements. That would be for those occurrences that are more frequent in nature without actually prescribing what the frequency is at this point. And also the exception on the registration for realtors and property managers.

- **Marshall:** Further questions, comments? All right, so let's get the motion before us. Elizabeth, do you have it down? Do you want to read it to us? All right, I'll try here.

    - So the recommendation is that any bill that would go forward that a statewide solution would be part of that; all types of property; we'd have a tiered system. The central tax collection and payment, and then a local option would be part of that also. That is the motion by Senator Barker, seconded by Peace. All.

- **Palen:** Senator Locke, did you get that?

- **Locke:** Yes. My hand is not raised.

- **Marshall:** Raise your hand again. Do a roll call then.

- **Palen:** Senator Barker.

- **Barker:** Yes.

- **Palen:** Delegate Bulova.

- **Bulova:** No.

- **Palen:** Delegate Carr.

- **Parr:** No.

- **Male:** No.

- **Palen:** Delegate Peace. Senator Stanley.

- **Male:** No.

- **Male:** No.

- **Marshall:** We have three yeses.

- **Palen:** Senator Locke is a no.

- **Peace:** Mr. Chairman?

- **Marshall:** Yes?
- **Peace:** Can I make another motion then?
- **Marshall:** Sure, absolutely.
- **Peace:** I would move that the Commission support some type of statewide framework in a broad context and that we also support continued discussion among the stakeholders for hopeful consensus going into the 2017 Session. I think that's relatively broad, but I hope it kind of sums up the sense that there is some utility in a statewide framework, regardless of what that might entail.
- **Marshall:** Okay, do we have a second?
- **Carr:** Second.
- **Marshall:** All right, discussion. Seeing none, Elizabeth, let's do another roll call.
- **Palen:** Senator Barker.
- **Barker:** Pass
- **Palen:** Delegate Bulova.
- **Bulova:** Yes.
- **Palen:** Delegate Carr.
- **Carr:** Yes.
- **Palen:** Delegate Marshall.
- **Marshall:** Yes.
- **Palen:** Delegate Peace.
- **Peace:** Of course.
- **Palen:** Senator Stanley.
- **Stanley:** No.
- **Female:** Yes.
- **Male:** Yes.
- **Palen:** So we have one abstention.

- **Palen:** Senator Locke?
- **Locke:** I didn't hear that.
- **Palen:** Senator Locke, I believe that your vote is yes. It is to go forward with some sort of statewide solution and continued discussions in a very broad context?
- **Locke:** I'll go with that.
- **Marshall:** Okay. All right. Anything else on short-term rentals?

[Break for lunch.]

3. Neighborhood Transitions and Residential Land Use

- **Marshall:** We will resume now since I have finished my lunch. Next on the agenda is we have a bill that was brought by me at the request of the City of Danville. Corey Wolfe with the City, would you kind of give a 30,000-foot view of what the problem is and what we're trying to solve? And welcome.
- **Corey Wolf:** Sure. My name is Corey Wolfe. I'm the assistant city attorney with the City of Danville. Would you like me to explain what, exactly, the bill would—okay.
- **Marshall:** I think maybe first of all— they've probably heard it from me, but maybe they need to hear from somebody else. That's the issue in Danville that you're trying resolve and where did the idea come from over in North Carolina and brought it across. So if we could give a little bit of background, first of all.
- **Recordation of Deeds/Liens; Pilot Project Danville** (Bill in Binder)
    - **Wolfe:** Sure. There are multiple issues that we're trying to resolve. The first is just basic tax collection. We're trying to get another tool in our arsenal, essentially, to enforce. We have a rather significant tax delinquency of about 40,000 people and recurring delinquency of about $1.8 million a year. That is after the efforts of our independent collections council. In fiscal year 2008, they recovered about $700,000 of delinquent tax revenue, and the overall delinquency barely went down about $5,000. They're doing a lot of work just to keep that static. And that figure also excludes about $4.7 in liens for nuisance abatement charges, including the demolition of unsafe structures, weed abatement, things like that.
    - **Marshall:** And let me add to that. When I was on city council, it's been a decade and a half ago, but the City of Danville at that time had 12 percent of its housing in the city as vacant.
    - **Wolfe:** That's right.

- **Marshall:** Now it's not quite as much, but the City of Danville is appropriating a million and a half dollars a year taking down derelict structures. So you can ride through different neighborhoods, and you'll see a good house, good house, a derelict structure, good house, good house. And so what they are doing is these fall in disarray when you lose close to 20,000 in population in less than a decade. People go somewhere else looking for another job.

    - So, the problem we're having is it's not fair to the people in those neighborhoods who are taking care of their houses to have that derelict structure. But it's also not fair to us taxpayers who are having people who are gaming the system.

    - I happened to have breakfast yesterday with the city manager. And one company that he was telling me about is Slum Dog Millionaire.

- **Wolfe:** That's right.

- **Marshall:** You can't make this up.

- **Wolfe:** Slum Lord Millionaire.

- **Marshall:** Oh, Slum Lord Millionaire. And who is it owned by? Spanky Macher from Roanoke, who used to run a restaurant named Spanky's. So this is the type of issue we're dealing with. I just wanted to add that in. Sorry; keep going.

- **Wolfe:** And just to dovetail from that a little bit, I found out from a building official that City of Danville demolished about 50 privately owned nuisance structures in fiscal year 2015 at a cost to the City of about $700,000. Charles Bookie, our housing consultant, issued a study that suggested that we should demolish up to 500 by the end of 2020 to improve our housing stock, which, again, is a significant cost to the City. And it's important to us that we're able to perfect and impose and collect on the liens for those expenses against the property owner. That is something that this bill is attempting to address.

- **Female:** Mr. Chairman, may I ask a question?

- **Marshall:** Yes, please.

- **Female:** My question is, have you all done an analysis to see how many of these are parcels where the lien is more than the assessed value?

- **Wolfe:** I do not know if anyone has determined that figure. I apologize.

- **Female:** That will affect whether or not people are going to even want to make the purchase, make the sale, make the transaction happen—if the lien is more than what the property's worth.

- **Wolfe:** Sure, sure. I'm afraid I don't have that information.

- **Marshall:** Okay. Further questions?

- **Flynn:** Yes, Mr. Chairman. A question about the draft. I'm sorry I didn't get back to you guys. In Section 3, the exemptions from it or exceptions to it, and that is the deeds conveying property the Danville Redevelopment Housing Authority, I'd raise that issue about there's a provision in the tax sale part. And I see that that is now identified in Chapter 39 of Title 58.1 where the property owner can convey the property to the locality. That's the language. I just wondered, just belt and suspenders a little bit. Still, if perhaps it should be stated on sub sub 5 that any deeds conveying property to the City or the Danville Redevelopment Housing Authority? I don't know if you need that from the City's perspective. Anyway, just offering the flexibility.

- **Wolfe:** Sure. I don't know if we'd regard that as necessary, but it's nice to have the flexibility.

- **Flynn:** Mr. Chairman, I would offer that as an amendment to this legislation, if possible.

- **Marshall:** So, Mark, tell me—

- **Flynn:** It's in subsection 3. It has 3, 1, 2, 3, 4, and the fifth one: Any deeds conveying property to the City or to the Danville Redevelopment Housing Authority.

- **Marshall:** So your motion is to strike that?

- **Flynn:** No, it's to add "the City or."

- **Marshall:** And where would we add that?

- **Flynn:** It would be on subsection 3 in Roman numeral V. "Any deed conveying property to—it says now the Danville Redevelopment Housing Authority. We would just add "the City or" to the Danville Redevelopment Housing Authority.

- **Marshall**: Okay. Is that a motion?

- **Flynn:** Yes, sir.

- **Marshall:** Do I have a second?

- **Male:** Second.
- **Marshall:** Any discussion? All those in favor of that say Aye. Opposed? Any other questions? David, this came before yours? No, it didn't; it came before Senator Locke. Senator Locke, are you still on the phone?
- **Palen:** Mr. Chair, Senator Locke is no longer on the phone.
- **Marshall:** All right. So, what's your pleasure? What we're asking is a recommendation as we have done in the past in that Do we want this bill to be part of our packet of bills that would go forward for endorsement by the Commission in '17.
- **Carr:** Mr. Chairman, I'll make that motion.
- **Male:** Second.
- **Marshall:** I have a motion and a second. Any discussion? All those in favor say Aye. Opposed? Thank you.
- **Wolfe:** Thank you, Mr. Chairman.
- **Marshall:** Thank you, sir.
- **Palen:** If we could return to the first item on assistance animals. Did you want to ask if there is anybody from the work group that wants to carry that legislation? And for this legislation, may I put you as the—
- **Marshall:** Yes. The assistant animal, we did not vote on that. So, do we want to make that a recommendation from the Housing Commission for '17? If somebody does, make a motion on that.
- **Barker:** I'll make a motion to make that a recommendation of the Housing Commission.
- **Marshall:** All right. And do I have a second?
- **Male:** Second.
- **Marshall:** Any discussion? Hearing none, all those in favor say Aye. Opposed? Who had the bill to start with?
- **Palen:** The bill came to the Commission through a letter. It was not a legislator.
- **Male:** It was just a request.
- **Marshall:** It was a request; it was not a bill. All right. So who wants the bill? All right.

- **Barker:** I was at the meeting, so I could know a little bit about the issue now.

- **Marshall:** And I hate to even say this, so you're going to be the lucky dog that's going to take this.

- **Barker:** From one barker to. . .

- **Marshall:** That's even better. Okay. All right. Anybody on the House side who wants to take this? Hearing none, congratulations. What's next, Elizabeth?

- **Disclosures in Historic Districts** (Recommended by Work group; Bill in Binder)

  - **Palen:** Mr. Chair, next we have disclosure in Historic Districts. This bill came about because in Senator Locke's district there were people that were purchasing homes in areas that are designated as historic districts. They were purchasing the homes, and then they were destroying the historic elements of the homes and saying that they were not aware that they couldn't take off the porch or the windows, or they were putting on roofs that were asphalt and doing things that were not in conjunction with what they should do in a historic district, thereby having the district lose value as a whole and the neighbors lose value in their homes.

    - So they asked if there could be packets as there are in property owners' associations giving their rules and regulation of historic districts. That ultimately did not work on a statewide basis, but there is a proposed bill that maybe Chip could describe.

  - **Dicks:** Mr. Chairman, member of the Commission, the discussion was about whether effectively the City of Portsmouth would become like a homeowners association and give a packet that included all the historic information that they adopted at the local ordinance level. As Elizabeth said, there were a number of problems with enforcement. As you all know, we have a buyer beware or a red flag disclosure bill already existing in law that alerts the buyer to certain kinds of things that they should be aware of.

    - And so the language before you, I think, in your packet basically adds to existing language that says buyer beware about a historic district. And it goes on to say that you need to review any materials that the locality has that either are online or in the office to make sure that you know what you can do in terms of renovation of the property, addition of a deck, or any other sort of thing that might affect the historic quality. That's the compromise that we came out with in the stakeholder discussions.

  - **Marshall:** Let's see if we have any questions.

- **Palen:** Just on another note, Mr. Chair. This bill was voted on in committee. Portsmouth agreed to it, and it had the recommendation of the work group.

- **Marshall:** All right. Question of Commission members? This is from Neighbor Transitions-did they recommend that this bill go forward?

- **Dicks:** Yes.

- **Palen:** Yes, sir, it was recommended to go forward.

- **Marshall:** Okay. Do we have a motion? I have a motion and a second to move this bill forward on our recommendation list. Any discussion? All those in favor say Aye. Opposed? Thank you. Next, Elizabeth.

- **Recycling in Multi-Family Dwellings** (No Legislation)

  - **Palen**: The next item we had on the agenda came in the form of a request from Senator Ebbin to look at recycling in multifamily dwellings. We had Senator Ebbin present at a work group meeting, and then we had a study prepared by VACO and VML and determined that there is no legislation to go forward at this point in time.

  - **Marshall:** Okay, thank you. I guess next is Common Interest Communities. Delegate Bulova.

4. Common Interest Communities – Delegate David Bulova

- **Small Self-Managed CICs and Fees** (Bill in Binder)

  - **Bulova:** Thank you, Mr. Chairman. We actually heard our final bill this morning at 9:00. Delegate Watts brought up the issue of the fact that our Code has a differential between professionally managed and self-managed HOAs on the disclosure packet fees. As we got more into her bill, I think she started to realize how long of a history there is about why the Code is the way that it is and the fact that there are some self-managed associations that are very sophisticated; some of them aren't. And sometimes it has nothing to do with size.

    - Ultimately, even though she came in during the summer and then we came back today, we were not able to reach consensus between the stakeholders, primarily the Community Association Institute and the realtors. I'm not sure if they will. But we did talk about the fact that the stakeholders are looking at potentially doing a comprehensive review of the Property Owners' Association Act, so this might be a good issue to look at in a broader context.

        - So, what I think we'll see is a request from Delegate Watts by letter that if we do embark on that, then we'll also take a look at this particular issue and make sure that she's a stakeholder at that table.

    - **Marshall:** I asked a question that I knew the answer to. I asked Delegate Watts if she wanted to speak.

    - **Delegate Vivian Watts:** I think that Delegate Bulova fairly expressed it. I will be introducing two versions of the bill, on that the realtors had developed and one that was a different, more simply version, with the idea of coming before I believe General Laws and asking that a letter be drafted that really focuses the need for this type of comprehensive review now that the Common Interest Community Legislation has been in place for fifteen years with a lot of amendments to it to bring cohesiveness to it. I know we've had good dialogue in the last ten months to realize, as Delegate Bulova said, the sophistication of a number of the self-managed and to focus on the product rather than necessarily the size of the associations.

    - **Marshall:** When you say review, the bill that you're going to put forward, are you going to ask for the review from the Housing Commission or?

    - **Watts:** Next year.

    - **Marshall:** Okay, good.

    - **Watts:** But not asking for any recommendation at this time.

    - **Marshall:** Okay, thank you.

    - **Watts:** Thank you.

    - **Marshall:** Any questions of Delegate Watts? Thank you, ma'am. Anything else? Okay.

- **Palen:** Mr. Chair, we have two other issues that were referred to the Commission.

- **Marshall:** Are you on the front page?

- **Palen:** I'm under the Referred Legislations tab.

- **Marshall:** Under Referred Legislation, okay.

- **Palen:** I just wanted to let you all know what we did with those things that were referred. One was the ground cover in proximity to buildings. We heard from DHCD on that topic. The topic was deemed to be better suited to be decided according to Building Codes, so we didn't go any further with that issue.

- Senator Ebbin's study on bug infestations in adjoining buildings: after discussing some constitutional complications with him about passing that legislation or putting together some legislation on that, he decided that he no longer needed us to study that issue.

- And Senator Vogel sent to us a piece of legislation on the Virginia Community Impact Authority. If anybody's interested, I have further information on that issue. I spoke with her about the fact that it did not really address housing directly. And I spoke to her constituent, and I told him that we could only address the portion of that legislation that impacted housing. So that was no longer of interest to that party, either, so we did not take up the issue for study.

- **Marshall:** Okay. Any questions of Elizabeth on that? All right.

VI. Election of Chair

- **Marshall:** Let's do a little bit of housekeeping here. First of all is that T.K. has been a member of this Commission all the way back to 2000. A real trusted member. He's terming out. Is that correct? He's volunteering to go off. I think he's got other things to do. But T.K. has done a great job here. Elizabeth, what I'd ask of you is to draft a letter that we can send to him, thanking him for his service.

  - The next thing is election of the chair and vice-chair.

- **Palen:** Mr. Chair, Senator Locke—

- **Marshall:** I think we might have Senator Stanley.

- **Stanley:** Mr. Chairman, I have a motion. Mr. Chairman, my motion would be that we re-elect you as chairman and also Senator Locke as vice-chairman of this very fine committee, which I now serve on.

- **Male:** Second.

- **Marshall:** All right, so the recommendation is to elect you as—

- **Stanley:** My motions exactly were to elect Delegate Danny Marshall as chairman and Senator Mamie Locke for vice-chairman.

- **Marshall:** All right. Do we have a second?

- **Male:** Second.

- **Marshall:** Any discussion? All those in favor say Aye. Opposed? Thank you. Thank you for your confidence.

VII. Public Comment and Adjournment

- **Marshall:** Now it's time for public comment, but I think all the public has left. But if anybody else would like to come up and speak, please do so now.
    - As we move forward into '17, a lot of bills come before you, Senator Stanley, and before your subcommittee. And I serve on CCNT, a committee that hears a lot of these bills. So, as you see something, an idea that's not quite ready for prime time, please send it. Chip, anybody else, that has some ideas that you think that we might want to look at in our program of work for '17, please either get those to me or get those to Elizabeth.
    - All right. Any public comment? Anybody out there to tell us how the world should be?
    - Hearing none, Merry Christmas. Happy new year.
    - The meeting was adjourned at 1:35PM

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice-chair
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VIRGINIA HOUSING COMMISSION

AGENDA

Affordable Housing Real Estate Law and Mortgages Work Group

Thursday, July 14, 2016, 10:00 AM
House Room C, GAB

I. Welcome and Call to Order

- Delegate Christopher Peace, *Chair*

II. Companion Animals and Rental Property

- Chip Dicks, *Virginia Association of Realtors*
- Bismah Ahmed, *Apartment & Office Building Association (AOBA) of Metropolitan Washington*
- Patrick McCloud, *Virginia Apartment & Management Association (VAMA)*
- Heidi Lawyer, *Executive Director, Virginia Board for People with Disabilities*
- Helen Hardiman, *Director of Fair Housing, HOME*

III. Real Estate Disclosures *(HB 1264, 2016 Robinson)*

- Delegate Roxanne Robinson
- Chip Dicks, *Virginia Association of Realtors*

IV. Impact of Tenant Bankruptcies on Landlords

- Senator William DeSteph

V. Public Comment

VI. Adjournment

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Affordable Housing, Real Estate Law, and Mortgages Work Group
Thursday, July 14, 2016, 10:00 AM
House Room C, General Assembly Building

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

Delegate Christopher Peace, *Chair*, was delayed, so **Delegate Barry Knight** called the meeting to order at 10:00 AM.

Work Group members in attendance: Delegate Christopher Peace, *Chair;* Delegate Betsy Carr; Delegate Barry Knight; Senator George Barker; Sentaor William Stanley; Mark Flynn, *Gubernatorial Appointee;* Laura Lafayette, *Gubernatorial Appointee;* Neal J. Barber, *Community Futures;* Steve Baugher, *Virginia Association Mortgage Brokers;* Robert N. Bradshaw, *Independent Insurance Agents of Virginia;* Paul Brennan, *Virginia Housing Development Authority;* J. G. Carter, *Towne Bank Mortgage;* Tyler Craddock, *Manufactured & Modular Housing Association;* Heather M. Crislip, *President and CEO of HOME;* Chip Dicks, *Virginia Association of Realtors;* Andrew M. Friedman, *Virginia Beach Dept. of Housing & Neighborhood Preservation;* Brian Gordon, *Northern Virginia Apartment Builders Association;* Kelly Harris-Braxton, *Virginia First Cities;* Kelly King Horne, *Homeward;* Ralston King, *Whitehead Consulting;* Joe Lerch, *Virginia Association of Counties;* Renee Pulliam, *Virginia Apartment Management Association;* Jay Speer, *Poverty Law Center;* Elizabeth Steele, *Stewart Title;* Chris Thompson, *Department of Housing and Community Development;* Michael Toalson, *Home Builders Association of Virginia;* William Walton, *Real Property, Inc.;*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Real Estate Disclosures (HB 1264, 2016 Robinson)

- **Delegate Roxann Robinson:** When people move into a neighborhood without a home owners association (HOA), it does not mean there aren't covenants in place. There is concern that because it is not mandatory to disclose them without an HOA, there are people who do not know about covenants that apply to the area they are moving into.

- **Chip Dicks,** *Virginia Association of Realtors*: This bill being in the Commission is unusual because the bill passed. The reason this is brought to the Commission is to see if this is a Christmas tree bill and will become a problem.
    - In 1992, the Virginia Association of Realtors requested legislation to address the Residential Disclosure and Disclaimer Act. Part of the Act was hardly ever used, and the Act became all disclaimer and hardly any disclosure.
    - In 2001, through the Housing Commission a red-flag disclosure bill was created and adopted. This then became a Christmas tree bill. To address this, Delegate Miller in 2013 suggested we establish a process where DPOR puts on the website the current forms for the updated laws. Since then, there have been a number of clarifications.
    - This year, the clarification was made to help ensure that buyers look into covenants and restrictions in circumstances where there is no HOA.
- **Dicks:** In the opinion of the Virginia Association of Realtors, yes, this is a Christmas tree, but we've addressed that by having in on the Real Estate Board website. We don't know a better way to address this than the way it is now.
- **Laura Lafayette,** *Gubernatorial Appointee*: The process we have now works very well on a practical level.
- **Senator William Stanley:** In practice are real estate agents encouraged to go over each item in the packet?
    - **Dicks:** We train to have this discussion with their buyers. We encourage people to go on the website with their client and go through the forms.
- **Senator Stanley:** Are there any burdens or liabilities on that realtor who did not go over that even though you suggest that?
    - **Dicks:** They already have liability in that circumstance. If they fail to meet the standard of care, then they can have liability under their broker's agreement. I can't speak to the training for those not in the Virginia Association of Realtors.
- **Senator Stanley:** Of these 10 points in this packet, is it a breach of the standard of care to only go over eight of them?
    - **Dicks:** No, I believe it is the responsibility of the realtor to go over the form.
- **Robert N. Bradshaw**, *Independent Insurance Agents of Virginia*: This reminds me of insurance policies. I think this is going to have to evolve as technology evolves. It

seems that a buyer's agent should be going over each of these points with their client and not only some of them.

- **Dicks:** You must remember that this is a buyer beware state. What we have done is pass some statutes with red flags.

- **Delegate Christopher Peace:** Is there a list of the complaints to the Real Estate Board that would illustrate failure to do these things?

    - **Dicks:** They do have complaints. I do not know if they categorize them by the type of complaint.

    - **Mary Broz-Vaughan,** *Department of Professional and Occupational Regulation (DPOR)*: I can't remember a specific complaint about this issue. The burden to provide the disclosure statement and have it signed applies whether or not you are represented by an agent.

III. Impact of Tenant Bankruptcies on Landlords

- **Senator William DeSteph:** There are two scenarios that had a major impact on apartment owners. In the first one, a resident stopped paying rent in September 2013. The apartment owner filed an unlawful detainer (UD) in November 2013 with a hearing set for December 2013. The resident filed for Chapter 13 protection in December 2013. The judge then stayed the eviction until the completion of the personal bankruptcy reorganization, which allowed the tenant to live rent-free.

    - When the bankruptcy was finalized, the judge ordered the tenant to begin paying rent again with an additional fee to pay back for previous rent. The tenant never paid any of the rent or past due rent and then was evicted. The apartment owner was left with over $6,500 in lost rent, utilities, and legal fees.

    - At least four other individuals in that apartment building heard what happened and did the same thing. The total loss was over $30,000.

    - In scenario two, the utilities on the apartment are submetered. The tenant didn't pay their utilities since November 2013. The matter was heard in general district court in February 2014. The judgment was for the defendant.

- **Senator DeSteph:** The tenant was non-renewed in February. They re-filed in March and the case was dismissed. They re-filed in May and the case was dismissed. The matter was then scheduled for September 2014 and continued until December 2014, where the judgment was for the defendant.

- The tenant appealed to circuit court, which stretched to January 2015 and continued until November 2015. In December 2014, the tenant started paying his rent in escrow. In November 2015, the circuit court ruled for the defendant, but the plaintiff was given 30 days to appeal before the escrow was released. The tenant appealed again. As of January 2016, the apartment owner has still not been paid either rent or utilities. It is ridiculous that the tenant is using the system to play against the apartment owner. The owner is now owed $17,000 in rent and utilities.

- How does the Housing Commission look at the impact of tenant bankruptcy proceedings and tweak it to ensure this does not happen?

- **Mark Flynn**, *Gubernatorial Appointee:* I've done executor contracts on expired leases on behalf of the creditors in the commercial context. That process does not apply here?

    - **Senator DeSteph:** Yes. And all the numbers I quoted to you did not include legal fees.

- **Jay Speer**, *Poverty Law Center:* Do you know whether the landlord's attorney filed a motion for relief from stay in the bankruptcy court?

    - **Senator DeSteph:** I don't know what the lawyers did or did not do.

- **Speer:** It seems to me you can get a relief from stay or file a motion. I believe an attorney can intervene in the bankruptcy.

    - **Senator DeSteph:** I believe that is what happened in the second case. There was a judgment to the defendant to release the escrow. But as of January 2016, the money had still not been released.

- **Delegate Peace:** My concern is that other tenants would see their rent increase as a consequence.

- **Dicks:** On the bankruptcy, I believe a tenant files bankruptcy. At that point there is an automatic stay where no state court for unlawful detainer can go forward. If this has already resulted in a money judgment, then that is enforceable. That gives you a preferred status as opposed to an unsecured status.

- **Delegate Peace:** Does that have to occur before the bankruptcy is filed?

    - **Dicks:** Yes. The landlord has to spend some legal fees and file an adversary proceeding requesting relief from the automatic stay. You ask the tenant to either affirm the lease or reject it. When it is affirmed, it is just like a

mortgage. They make it current and then pay it going forward. Most of the time, they reject it. That means two months' rent is at risk for the owner. The tenant is responsible for quantum mariat rent for the number of days the tenant is in the building after the bankruptcy court filing.

- We could do something in the process provisions in the Virginia law. With respect to the second case, there is definitely a process problem. One way to fix it is for a tenant to continue a case, all the landlord must do is ask that the rent be paid in escrow; and the judge is required to have it paid at the docket calling of the case. It may be an education issue that the owner must know to ask for the rent to be paid in escrow.

- There are other process issues, and it would be useful if the attorneys involved could communicate with us.

- **Senator Stanley:** A lot of rental agreements have default acceleration and termination clauses. There are penalties and forfeitures on these leases. Residential leases usually have first and last months' rent held as deposits by the landlord. Is there any mechanism for the landlord to find relief in the deposits?

  - **Dicks:** I think the escrow security deposit held in pre-paid rent is an asset of the bankruptcy estate. Federal bankruptcy court has jurisdiction over that until the adversary proceeding.

- **Senator Stanley:** Are you saying that the bankruptcy court could capture that money and then reallocate it to other debts.

  - **Dicks:** Yes, unless there is priority in judgment. It is worth looking into, but I don't know if there is much we can do about that. We can address the process issues if we better understand the details of the case.

IV. Companion Animals and Rental Property

- **Dicks:** Under the applicable disability laws, there is a lot of confusion about what constitutes a service, companion, or assistance animal. A service animal is limited to the Americans with Disabilities Act. It has to be a certified dog. The ADA only applies to apartment communities in public accommodation areas. Under the Fair Housing Law, if I have a handicap that substantially affects my life activities that is a physical or mental impairment, then I have a right as a tenant to ask a landlord to provide reasonable accommodation.

  - Accommodations are at the tenant's expense. The landlord is obligated to make reasonable modifications, which is not what we're discussing here. There is a requirement for practices, policies, and procedures, which pertains

to this issue. What constitutes a handicap? There is also a provision that states that the landlord cannot ask the tenant about the nature or extent of their handicap.

  - There is a provision in HUD guidance that discusses a landlord asking for documentation that verifies the handicap and that you need a reasonable accommodation that pertains to the handicap. What's evolved is that there are internet providers that are giving people reasonable accommodation letters to get around pet deposits and pet rent.

- **Dicks:** The legislation I drew up gives a definition of assistance animal. There is also a definition of housing provider, and a new definition of mental impairment. The housing provider is allowed to ask if the assistance animal is required because of a disability. The housing provider may request reasonable accommodation from someone licensed in Virginia that has a therapeutic relationship with the request order.

  - If you misrepresent, it is a Class 4 misdemeanor. Anyone who is not a medical provider that gives an accommodation letter is violating the Consumer Protection Act. I suggest we look at the Consumer Protection Act and add a provision that applies directly to this.

- **Bismah Ahmed,** *Apartment & Office Building Association (AOBA) of Metropolitan Washington*: We have a lot of members coming to us with this issue. We have a five-minute video to share with you.

  - That video summarized our issues. I wanted to see how easy it was for myself. The results were shocking. We took a five-minute survey, with very leading questions. We never talked to anyone and yet within less than 24 hours we received our verification where a doctor approved us for a mental health condition. The process was very easy.

  - There is nothing we can do to pursue these false verifiers. These websites are aware of this, and they cover themselves in the small print.

- **Patrick McCloud,** *Virginia Apartment & Management Association (VAMA)*: We came up with a third-party verification form that verifies the existence of the disability and need for the accommodation. We have a problem that is disenfranchising those with disabilities. The answer for what qualifies as verification is foggy.

  - We often find ourselves in a situation where we must accommodate those who are faking disability as they meet all the legal requirements.

- **John Cimino,** *Director of Public Policy, Virginia Board for People with Disabilities*: I do not support fraud, but I ask you to proceed with caution. We don't know exactly how prevalent these fraudulent websites are. Eleven percent of the population has disabilities, and a portion of those require animals to live in their homes and take advantage of opportunities.
    - For many, this can be an invisible disability, like PTSD or autism. We often find that the use of service assistance animals is on the rise for these conditions. There is a measurable benefit in people's lives. I encourage you to not make it harder for people with legitimate claims to get service animals. Housing discrimination against those with disabilities still exists. Discrimination complaints are most often those regarding people with disabilities.
    - We have concerns that state law fixes could end up butting heads with federal law. We encourage you to pull from federal guidelines.
- **Senator George Barker:** I think we need to take time to get this right before session.
- **Helen Hardiman,** *Director of Fair Housing, HOME*: There are still landlords that are not respecting fair housing law. When someone comes for assistance, we require credible documentation of their disability and need for the animal. We do not sugarcoat this. Two clients this year provided us with these online verification letters. We said it does not appear to be credible and asked them to find a local service provider to verify this. In both cases, the person was able to provide this documentation.
    - We had one client who couldn't provide this documentation after showing us an online verification letter. We are not helping people perpetuate fraud. I think landlords under existing law can already say no. This process of asking for reasonable accommodation is an interactional process.
- **Brian Gordon**, *Northern Virginia Apartment Builders Association*: The websites have the fine print saying these are not legal documents, but the letters they present are meant to look professional. For those that suspect that it's not a valid verification, we do not want a fair housing claim against us. We are hoping for some safe harbor.
    - **Hardiman:** If someone files a claim with us, it is at the intake stage; and if the disability cannot be verified, the claim is never filed.
- **Senator Barker:** We need to provide consistent guidance, so we get consistent decisions. This will both protect property owners and those with disabilities.

    - **Hardiman:** Reasonable accommodations provided on a case-by-case basis with viable third-party verification. If we can clarify that without criminalization, then that seems like the solution to me.

- **Delegate Peace:** Does HUD provide legal opinions on these questions?
    - **Hardiman:** I have not been able to get HUD to weigh in on this.
- **Delegate Peace:** Perhaps our Commission would get more of a response from the federal government.

V. Public Comment

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

VI. Adjournment

- Upon hearing no request to comment, **Delegate Peace** adjourned the meeting at 11:45 AM.

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

AGENDA

Affordable Housing Real Estate Law and Mortgages / Neighborhood Transitions Work Groups

Monday, December 5, 2016, 1:00 PM
House Room D, GAB

I. Welcome and Call to Order

- Delegate Christopher Peace, *Chair*

II. Companion Animals and Rental Property

- Chip Dicks, *Virginia Association of Realtors*
- Helen Hardiman, *Director of Fair Housing, HOME*
- John Cimino, *Director of Public Policy, Virginia Board for People with Disabilities*

III. Recycling for Multi-family buildings throughout the Commonwealth (SJ 87, Ebbin, 2016)

- Michelle Gowdy, *Virginia Municipal League*
- Joseph Lerch, *Virginia Association of Counties*

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

V. Disclosures in Historic Districts

- Chip Dicks, *Virginia Association of Realtors*
- Sherri Neil, *City of Portsmouth*

VI. Public Comment

VII. Adjournment

COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

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

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

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

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

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Companion Animals and Rental Property

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

state and federal law. It's clear under federal and state law that any animal needs to be under control and follow reasonable rules and regulations. Language on lines 159–160 shows that policies apply equally, with the exception of financial obligations, for someone that is awarded a reasonable accommodation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Disclosures in Historic Districts

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

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

VI. Public Comment

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

VII. Adjourn

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

AGENDA

Virginia Housing Commission
Common Interest Communities Work Group

Thursday, July 21, 2016 - 10:00 AM
House Room C
General Assembly Building

I. Welcome and Call to Order

- Delegate David L. Bulova, *Chair*

II. Home-based Businesses in Property Owner Associations (Petersen, C. SB 238, 2016)

- Senator Chap Petersen
- Mary Braxton

- Sue Tarley, *Community Associations Institute*
- Jeremy Moss, *Cobblestone at Lee's Mill Condominium Association*
- David Bruan, *Penderbrook*
- Ronda DeSplinter, *Kingstowne*

III. POA/Fees Disclosures Packets (HB548, HB710; Watts, 2016)

- Delegate Vivian Watts
- Tena Bluhm, *George Mason Forest*

IV. Chip Dicks, *Virginia Association of Realtors*

V. CIC Board Update

- Trisha Henshaw, *Executive Director*
  Common Interest Communities Board

IV. Public Comment

VI. Adjourn

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
Common Interest Community Work Group
July 21, 2016, 10:00 AM
House Room C, General Assembly Building

I. **Delegate David Bulova** called the meeting to order at 10:00 AM.
Work Group members in attendance: Delegate David Bulova, *Chair*; Delegate Betsy Carr; Delegate Barry Knight; Senator Geoge Barker; Janice Burgess, *Virginia Housing Development Authority*; Heather Gillespie, *Common Interest Communities Ombudsman*; Trisha Henshaw, *Common Interest Communities Board*; Mike Inman, *Community Association Institute*; Ronald P. Kirby, *Virginia Association of Community Managers*; Michael Toalson, *Home Builders Association of Virginia*; Pia Trigiani, *Common Interest Communities Board*; and Jerry Wright, *Community Associations Institute.*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. The work group had two bills assigned during the 2016 Regular Session.

Trish Henshaw
Trish Henshaw gave an update on the work of the Common Interest Community Board and some of the things that they are working on during this interim (see materials.)

Senator Chap Petersen
Senator Chap Petersen presented his bill (SB 238, 2016) dealing with home-based business and property owner associations. The bill prohibits homeowners associations (HOAs) from disallowing a home-based business within a residence.
A discussion took place about home-based childcare and whether it is a business or not. Senator Petersen was seeking a way to state that an HOA cannot prohibit a home-based daycare unless its declaration specifically outlines that fact. Most declarations are much more general

in reference to businesses and do not specify prohibitions on home-based daycare.
One of the potential solutions discussed was making sure that an HOA defines a home-based business versus a residential ancillary use and that the use matches what the locality requires.
In some instances, a locality declares home businesses that are daycares as a residential ancillary use. If the HOA responds it is a business, then they assert they are able to regulate or not allow it.
Senator Petersen concluded that he thinks that there is a narrow potential path forward to assert, if the locality defines it as residential, that the HOA should define it as residential and define how that is done.

III. **Conclusion:** There was no specific recommendation from the work group.

Delegate Vivian Watts (HB 548, 2016 and HB 710, 2016)
The topic concerns fees for disclosure packets for new people who are moving into a neighborhood.

When this system was set up, there was a distinction between a self-managed association versus a professionally managed association with regard to what kind of fees could be collected. But now a self-managed association is not just a cluster of 10, 20, or 30 homes; there are self-managed associations that have hundreds of homes and take on many of the same functions as do large associations.

Conclusion: Chip Dicks will work with the patron to determine a way to be able to marry the interests of all parties with a stake in the matter. Mr. Dicks feels reasonably confident that the work group might be able to come up with solid compromise legislation that would move forward during the legislative session.

The meeting was adjourned at 12:00 PM.

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

AGENDA

Virginia Housing Commission
Common Interest Communities Work Group

Wednesday, December 14, 2016 - 9:00 AM
House Room C, General Assembly Building

I. Welcome and Call to Order

- Delegate David L. Bulova, *Chair*

II. POA/Fees Disclosures Packets (HB548, HB710; Watts, 2016)

- Delegate Vivian Watts

III. Public Comment

IV. Adjourn

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
Common Interest Community Work Group
December 14, 2016, 10:00 AM
House Room C, General Assembly Building

I. **Delegate David Bulova** called the meeting to order at 9:00 AM.
Work Group members in attendance: Delegate David Bulova, *Chair*; Delegate Betsy Carr, Senator George Barker; Janice Burgess, *Virginia Housing Development Authority*; Heather Gillespie, *Common Interest Communities Ombudsman*; Trisha Henshaw, *Common Interest Communities Board*; Mike Inman, *Community Association Institute*; Ronald P. Kirby, *Virginia Association of Community Managers*; Michael Toalson, *Home Builders Association of Virginia*; Pia Trigiani, *Common Interest Communities Board*; and Jerry Wright, *Community Associations Institute.*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. The Common Interest Communities Work Group met to discuss the bill of Delegate Vivian Watts (HB710, Watts, 2016) concerning fees for disclosure packets in non-professionally managed associations.

Delegate Watts presented a chart comparing professionally managed and non-professionally managed associations. She implored the work group to have equity in treatment, as costs are exorbitant for volunteers working for a community.

Chip Dicks, Virginia Association of Realtors, said that he had been working with Delegate Watts as well as the Community Managers'

Association to develop a fee structure that all would agree upon but that there was not consensus.

Jack Rust, Virginia Association of Property Managers, said they had no problem with equity of fees but needed there to be equity of responsibilities of associations.

Pia Trigiani pointed out that small associations that are self-managed have the same liability as professionally managed associations.

Mr. Dicks stated that there needs to be a fresh look at the Condominium and Property Owners' Act and this issue could be included in the comprehensive re-write.

Delegate Bulova said there appears to be a platform of assessment issues.

III. Conclusion:

There was no bill recommendation from the Common Interest Community Work Group.

The meeting was adjourned at 9:45 AM.

DELEGATE DANIEL W. MARSHALL, III
DELEGATE DAVID L. BULOVA
DELEGATE BETSY CARR
DELEGATE BARRY D. KNIGHT
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE
SENATOR GEORGE L. BARKER
SENATOR WILLIAM M. STANELY, JR.

MARK K. FLYNN
LAURA D. LAFAYETTE
T.K. SOMANATH

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

AGENDA

Neighborhood Transitions & Residential Land Use and Housing & Environment Standards Work Group Meeting

Tuesday, August 2, 2016 - 10:00 am

House Room C, General Assembly Building

I. Welcome and Call to Order

- Senator Mamie Locke, *Chair*

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

- Corey Wolfe, Assistant City Attorney, Danville
- Chip Dicks, *Virginia Association of Realtors*

III. Recycling Programs for Multi Family Dwellings (SJ 87, Ebbin A. 2016)

- Senator Adam Ebbin, Senate of Virginia
- Brian Gordon, *Apartment & Office Building Association of Metropolitan Washington*

IV. Historic Properties not located within a Homeowner Association/mandatory disclosure of relevant information (SJ 80 Locke M. 2016)

- Sherri Neil Intergovernmental Affairs Director, Portsmouth
- Portsmouth citizen

V. Ground Cover and Proximity to Buildings

- Cindy Davis, *Director, State Building Codes Office*

VI. Public Comment

VII. Adjournment

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice-chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
Joint
Neighborhood Transitions and Residential Land Use Work Group
Housing and Environmental Issues Work Group

August 2, 2016, 10:00AM
House Room C, General Assembly Building

I. Welcome and Call to Order

- **Senator Mamie Locke**, *Chair*, called the meeting to order at 10:00 AM*:*

Work Group members in attendance: Senator Mamie Locke, *Chair*, Senator George Barker; Delegate David Bulova; Delegate Betsy Carr; Delegate Barry Knight; Delegate Mark Flynn, *Gubernatorial Appointee*; Laura Lafayette,*Gubernatorial Appointee*; Bernard Caton, *City of Alexandria, Legislative Director*; Tyler Craddock, *Manufactured & Modular Housing Association;* Cindy Davis, *Building Codes/Dept. of Housing & Community Development;* Chip Dicks, *Virginia Association of Realtors;* Brian Gordon, *Northern Virginia Apartment Builders Association;* Michelle Gowdy, *Virginia Municipal League;* Kelly Harris-Braxton, *Virginia First Cities;* Joe Lerch, *Virginia Association of Counties;* Barry Merchant, *Virginia Housing Development Authority;* A. Vaughan Poller, *Hampton Roads Housing Commission;* Elizabeth Rafferty, *Department of Housing & Community Development;* Earl Reynolds, *City of Danville, Community Development Director;*Michael Toalson, *Home Builders Association of Virginia;* Cal Whitehead, *Whitehead Consulting;* Brian Buniva, *Environmental Health & Safety; Sequa Corporation;* Ron Clements, *Virginia Building & Code Officials Association;* James R. Dawson, *Virginia Fire Prevention Association;* Sean P. Farrell, *Virginia Building & Code Officials Association;* Michelle Gowdy, *Virginia Municipal League;* Ed Rhodes, *Virginia Fire Chiefs Association;* Neal Rogers, *Virginia Housing Development Authority:*Jerry M. Wright, *Central Virginia Chapter-Community Association Institute*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Recordation of Deed / Liens (HB 636, Marshall D. 2016)

- **Locke:** We'll go ahead and get started with our agenda, beginning with House Bill 636, which was Delegate Marshall's bill on recordation of deeds and liens. Delegate Marshall is not here today, but he has Corey Wolfe here, who is the assistant city attorney for Danville. He will be doing a presentation on the legislation. Thank you and welcome.

- **Corey Wolfe,** *Assistant City Attorney, Danville**:*** Good morning, ladies and gentlemen. The city of Danville has proposed a pilot program that would essentially allow city council to require that no deed that transfers real estate within the city can be recorded unless the Department of Finance has certified that all delinquent real estate taxes, nuisance abatements, and other city assessments which constitute a lien on the property have been paid.

    - There would be an attorney exception to this for attorney brokered settlement where the attorney who drafts the deed could basically say this was drafted by an attorney who's in good standing with the bar, and any delinquent real estate taxes will be paid when closing proceeds are disbursed after the deed is recorded. So that would be something useful to have.

    - We are interested in this for a number of reasons. There is an obvious benefit that it facilitates delinquent real estate collection, which is an issue in Danville, considering that our properties are by and large of fairly low value. So we're kind of looking to use a shotgun approach to tax collection. But there are also a number of other benefits. This measure would facilitate our enforcement of delinquent tax and nuisance abatement liens.

    - For nuisance abatement liens like weed abatement, demolition of unsafe structures, things like that, state law requires us to actually bill those in the same manner as taxes and let them come delinquent naturally, which normally takes about thirty days. But within that time after receiving notice that this debt is due, a property owner may just convey the property to someone else, often someone who is completely unsuspecting and that has no interest in receiving the property. If that happens before we are able to record a lien, we can no longer enforce that debt against the property. We can only take a warrant in debt against the property owner. So it would facilitate our ability to enforce these liens, which of course supports our redevelopment efforts and blight abatement efforts. But there's also a definite consumer protection element as well.

    - If you have any questions at this state as well, I'd be happy to hear them.

- **Mark Flynn**, *Governor Appointee*: Madam Chair, as a practical matter, this applies really where there's no financing in the transaction?

- **Wolfe**: That's right, Mr. Flynn. In most cases, this is going to be a non-issue, as I said. Whenever there's a title search being performed, taxes are being checked. And any competent settlement attorney or real estate agent would ensure that those were paid before title is transferred.

- What we're really trying to get at is this sort of private treaty kind of shady deed-of-gift. Often the deeds are prepared by the owner themselves and may not even have legal effect. We're really trying to cut against these sorts of efforts to obscure who is the true owner.

- Something that we see often is that people will kind of dispose of these properties in any way they can either to avoid a tax or nuisance abatement delinquency or to avoid a criminal maintenance code enforcement case or a judicial tax sale case, which really hampers our efforts as far as blight abatement goes.

- **Flynn:** What percentage of the transactions in your city do you think would be subject to this?

- **Wolfe:** As I said, unless you count the attorney exception, which kind of obviates any need to go to city hall, I don't know about a percentage. Last year, I know that there were 143 property transfers that occurred without the delinquent taxes being eventually paid.

- **Locke:** Are there other questions?

- **Locke:** Chip Dicks.

- **Chip Dicks**, *Virginia Association of Realtors*: Madam Chair and member of the work group, Chip Dicks on behalf of the realtors and the circuit clerks on this particular issue.

  - I had a chance to work with Mr. Wolfe and Mr. Bohannin and Witt Clement on this during the session. The realtors had concerns because of the fact that we were concerned about the impediments to closing and the fact that there would be an additional requirement before closing. So the attorney exception, I think, helps us significantly on that and satisfies our local association.

  - The realtors were also concerned about the fact that there would be sort of a hodgepodge, if you will. The way the legislation was introduced, it would have been at local option. And so the recording practices and the deed practices in different localities may have been different throughout the state. And somebody from outside that locality would have known that necessarily without checking with that particular locality. So it would have created sort of an additional burden and impediment to closing.

  - Those issues have been addressed in a couple of substitutes that we've been discussing. One substitute we discussed during the session was whether or not there might be a possibility that the city would be willing to put a lis pendens on, a lis pendens being a notice that the taxes had not been paid. That approach was not acceptable to the city, so we tried another approach. And that approach is basically that there would be a three-year pilot project in the city of Danville and

that the city Finance Department would be responsible for providing the stamp on the deed. And yet to Mr. Flynn's point, the circumstances would be that all attorney-prepared deeds and attorney-closed deeds would be excepted from this process. So hopefully that would capture the universe of those properties that are delinquent and distressed and whatnot where somebody's trying to get around the process and transferring property not necessarily for a positive means.

- Realtors would be fine with the substitute that the parties have been working on. The clerks are not enamored with the substitute, but I think they would accept the substitute that was limited to a pilot project for three years with a report back to the Housing Commission in 2020, and then a sunset of 2021.

- So Madam Chair and members of the work group, I think it would be the joint request of the stakeholders that have been directly involved in this that you keep this on your agenda, give the stakeholder group a chance to finalize legislation and bring back to you a draft that at least would meet the stakeholders' concerns. And then at that point, you can consider that on the merits at that point. I think we'll be ready certainly within a month to finalize language.

- **Locke**: Okay. And this is fine with Delegate Marshall. All right. We will now move to item number three, Recycling Programs for Multi-Family Dwellings. This is Senate Joint Resolution 87, Senator Ebbin.

III. Recycling Programs for Multi-Family Dwellings (SJ 87, Ebbin A. 2016)

- **Senator Adam Ebbin**, *Senate of Virginia*: Thank you, Madam Chair.

  - Ten years ago, the General Assembly reduced our recycling goals. We had goals, which we still have, but they were reduced because we weren't meeting them. And we know that recycling saves energy. We know that it reduces waste to landfills and incinerators, which is of course a desirable goal. And we know that we do have state goals that are required to be met from DEQ and the Virginia Waste Management Board.

  - I think it's time for review; 2006 is when we reduced those goals. So I thought, we've got some low-hanging fruit. I know if you have one apartment building or one condo building, that that can be close to a whole neighborhood's worth of recycling that you can pick up at one point. I think it's a way that we could do better.

  - I know from my personal experience, the building that I used to live in in the City of Alexandria, when I moved in there was no recycling. I had contacted the city. If memory serves me right, at that time the city required a recycling plan. They didn't have any enforcement mechanism, which is maybe a separate issue. But there were no teeth in it. There were buildings in a pretty dense city that were not recycling that were densely populated.

- I know from my experience here in Richmond, for those who stay in a building called Riverside on the James, there is no recycling available. I had to take my recycling, put it in bags, and bring it somewhere else, which is something that most consumers are not going to do.

- We have a goal statewide of 15 to 25 percent. I don't think it's within this Commission's purview about what the state goal should be, but I think it is, of course, certainly within your purview about what these buildings do. So I'm asking you to study requiring it. And I think there could be some considerations that can be met if there are potential objections. For example, if rural areas don't offer recycling, you obviously would have a hard time requiring it. So it's possible to limit any requirements to localities that have recycling already available.

- If there were an issue with older buildings, you could always grandfather it in based on the size of the building, the number of units. In my experience, it's not that hard in most buildings to put in some of those Toters, but that's something you'll have to consider, whether the apartment and condominium groups find it difficult for some of their members.

- That's the gist of it. Just in terms of Code sections, it's § 15.2-928 that requires the local recycling waste disposal. And then [Title] 10.1 has the solid waste management goals. So that's my request is that you look at where it's being done, if it should be required to be done everywhere, which is my belief. I don't know if there are questions.

- **Locke**: Are there any questions of Senator Ebbin? Brian?

- **Brian Gordon:** *Apartment and Office Building Association of Metropolitan Washington:* Thank you.

- **Ebbin**: Can I interject one more thing that I think Mr. Gordon might have a comment on? I had not contemplated anything at all about offices. But I think it might be interesting to look into whether offices recycle paper or whether or not that would be a burden. That would also be another area that might provide a significant amount of recycling.

- **Gordon:** Thank you, and good morning, Madam Chair, members of the work group. My name is Brian Gordon. I'm here today representing the Apartment and Office Building Association of Metropolitan Washington, as well as the Virginia Apartment and Management Association. And I apologize. We had sort of a short timeline coming into today's meeting, so I don't have as much information as I'd like to have for you. But I have been able to compile some information that will hopefully be helpful to you in your discussion on this issue.

    - As Senator Ebbin indicated, state code is currently permissive in terms of recycling policies, allowing local governments the authority to mandate by local

ordinance any type of property to participate in the recycling program. Section 15.2-937 reads: "Any locality may by ordinance require any person to separate solid waste for collection and recycling" and that "[a]ny such ordinance shall specify the type of materials to be separated."

- I will call out one other line in that section because it's something that our members view as critical. No such ordinance at the local level shall impose any liability on any apartment or commercial office building, owner, or manager for the failure of tenants to comply with any of the provisions of the ordinance. I raise that because there are some jurisdictions across the country that have adopted provisions in their recycling laws that hold the property owners liable for the actions of the tenants. I'll use our neighbor to the north, Washington, D.C., as one example. The office building that AOBA is in, the city has people that they pay to dumpster dive. If they find an aluminum can in your waste disposal container, you get fines of up to $1,000 and escalating from there. That's against something that our members find very problematic because we don't have the ability to control the behavior of the tenants, necessarily.

- I will say that in the current landscape in Northern Virginia, these types of ordinances are very common. In fact, of the five major jurisdictions that comprise Northern Virginia—Alexandria, Arlington, Fairfax, Loudoun, and Prince William—Prince William is the only one of those five that doesn't have a mandatory recycling program for multi-family. I did not look at commercial for the purposes of today's discussion, but I believe that commercial is included in those policies as well. So it's something that in Northern Virginia a lot of our members already do comply with, these programs.

- We tried to get an idea of what the landscape is across the rest of the Commonwealth. Unfortunately, that's unknown to us at this time. We did reach out to Michelle at VML and Joe at VACO. Both were very helpful and got back to me. Unfortunately, those organizations don't keep that data. We've also reached out to the Virginia Department of Environmental Quality, their recycling programs, and haven't heard back. But certainly if we do get some information from them, we'd be happy to share that with the Commission as well. But that is to say we don't know what the pervasiveness of mandatory recycling policies is currently across the rest of Virginia and who would be affected by this.

- I will, however, share with you one example. Arlington County actually does a really good job on educating property owners, what their responsibilities are under their local ordinance, which does mandate recycling in multi-family properties. So I wanted to share with you what is entailed in such a program so that you know sort of what's required of building owners and property managers.

- Any owner of any property with three or more dwelling units is responsible for providing recycling of cardboard, mixed paper, magazines, newspapers, office paper, etcetera, metal and aluminum, glass bottles and jars, plastic, food and beverage containers, etcetera. In Arlington County, they recommend a single-

stream recycling program. That means that you have one bin into which all recyclables are dropped and that the vendor, whoever collects the recycling, separates those out for their individual recycling. The other way to do it is through a multi-stream, where you have basically one container for plastic, one container for glass, one for paper. That obviously gets very logistically difficult because you have so many containers around.

- Arlington's ordinance actually has a one-for-one requirement, meaning that anywhere you have a waste bin, you also have to have a recycling bin so the tenants have the option to throw things one place or the other. That also holds true of the dumpsters in the dumpster bays where you have to have a one-to-one ratio of recycling container to trash container.

- The housing provider is responsible for setting up the collection in Arlington County. It's not done by the municipality. Throughout Northern Virginia this is fairly typical, where you're responsible for setting up somebody to come in and collect that recycling. It's a minimum weekly collection in Arlington County. But if the property requires it, they'll require that they come more frequently than that.

- And then finally they have labeling requirements for the recycling containers as well that stipulate what language has to be on those containers in order to educate the tenants where they need to be disposing of their waste items.

- Finally, education of the tenants is required within the Arlington County ordinance. The education materials have to be in written form or in electronic form. It can't be just done verbally. It has to be provided to tenants within fourteen days of move-in. Inspections can be done by the County at any time. They can show up at the property and make sure that everything is in compliance with that ordinance.

- The recycling plan that you come up with has to be approved within sixty days of the building getting its certificate of occupancy. And then it has to be reapproved by the County every three years to make sure that you're complying with the ordinance.

- I just wanted to run you through that to give you an idea of what is entailed in their types of programs. We did try to collect a little bit of information in terms of cost. Again, because we were on a short timeline, I was only able to get through to a couple members. Just to use one member's example, we have a member in Blacksburg who has five smaller garden-style properties in which they have the four-yard, single-stream containers that are collected on a weekly basis. They generate roughly thirty-three tons of recycling every year with a cost of collection of only thirty dollars per week. But when you multiply that by five properties times fifty-two weeks a year, that comes out to roughly $8,000 a year, which isn't a tremendous expense, but it's also not insignificant, particularly for smaller properties.

- And then finally I just wanted to share with you a couple of other considerations that you might want to take into consideration in your deliberations. One of the issues that we've run into in jurisdictions that want to newly require recycling policies is the issue of space, as Senator Ebbin referenced. Your property may be configured such that you don't have enough space within your pickup bays for an additional waste container. You have the trash bin there already, and there's not space for a recycling container. It's a logistical issue, but it's something that when you think of urban areas like here in Richmond, it can be particularly difficult to try to get around.

- Finally, the administrative and enforcement cost to local governments. My understanding is that in the City of Blacksburg, they've actually had a recycling policy on the books for several years. But it's something they haven't started really enforcing until recently because they simply didn't have the resources. So that's also something to keep in mind.

- **Locke**: Thank you. Are there any questions?

- **Ron Clements**: Madam Secretary, Ron Clements. You mentioned enforcement. What agency is enforcing this? Or is there a specific agency that typically gets tasked with this?

- **Gordon**: I think it's the local governments themselves that are enforcing. I don't know which departments. It's probably different for each locality.

- **Michael Toalson,** *Home Builders Association of Virginia*: Madam Chairman?

- **Locke**: Yes.

- **Toalson**: Mike Toalson with the Home Builders. In Northern Virginia, in those localities that require recycling, are those costs paid for by the locality or are they paid for by the apartment owner?

- **Gordon**: It's paid for by the apartment owner. I will note that that's typically a pass-through onto the tenants. As everybody here knows, it's a single-revenue stream business. So anytime costs are increased, that's typically passed through to the tenants.

- **Toalson**: Is that passed through in the form of rent or passed through in the form of a specific charge or do you know?

- **Gordon**: I don't know. I would suspect that it's built into the rent, but I don't know the answer to that for sure.

- **Locke**: Yes, Chip.

- **Dicks**: Madam Chair, I think I can answer that last question. I think it varies from apartment community to apartment community. But there is specific legislation about

three years ago that allowed recovery of local government fees and to set them out sort of like your cell phone bill so that you know exactly what your locality's charging for, whether it's recycling or other municipal inspections and/or rental inspections, things like fire code inspections—all of those kinds of inspections. There is a laundry list of items that I know a number of landlords list. But it does vary. Some landlords just roll it in the rent and say that this includes all these charges. Other landlords I think break it out.

- **Locke**: Are there other questions?

- **Dicks:** Madam Chair, could I ask a question of Senator Ebbin? Adam, understanding that already localities can mandate this recycling program in whatever localities feel like that's appropriate for them, talk to us for a minute about why this should be a statewide mandate.

- **Ebbin**: I don't know what the percentage was that was required in 2006, but the General Assembly lowered the goals for recycling across the state. I don't think it was just the rural areas. I think it was everywhere in 2006. So it's been ten years. We know a lot of places are doing this. But there's no reason if Fairfax can do it that Prince William couldn't come up with a plan to do it as well.

- Also, in reference to Mr. Toalson's point. I think you asked who pays for it. I thought that in Alexandria and Arlington, that if you're not in an apartment or—that they pick up from individual homes, and that's part of what they provide.

- Right now, the buildings pay for trash collection, so this is a supplement. In my experience, all the trash haulers also offer recycling. Whether or not it's on the same truck—in three apartments and condos that I've lived in, in the City of Alexandria, it's always been the same day as trash collection. And I believe they even had portions on the same truck where they could put the recycling separately. So there is certainly a cost involved, but we also have to think about the cost involved of more landfills and to the environment and in general to our energy costs from not recycling. So I would say that even though localities can do this, that they should all follow the same standard, if it's possible. I can understand if the Commission would like to make exceptions for rural localities where there's not recycling available. But if it's available to a recycling center, if it can be contracted for, whether you start it all at once or tier it as to when they have to do this—I think certainly all new buildings should be doing this. And I think most existing buildings could be doing it.

- Smaller buildings, there is limited space. But I know Riverside on the James here in the City of Richmond, there's plenty of space for Toters near where the dumpster is. And it just kinda bothered me. I recycle. And there are a lot of people who want to recycle, citizens of the Commonwealth. And for it not to be available, and for me to have to bring it in my car up to Northern Virginia on the weekends, most people aren't going to do that. It's just a waste of resources. And contrary to the policy of the Commonwealth, if we have goals for how much should be recycled, we should make it easy to recycle everywhere that we can within reason. Thank you.

- **Dicks**: Madam Chair, if I could ask Michelle and Joe for a local government perspective, what a mandate would look like at the local government level and what it would cost in the implementation issues. The question is whether localities already have the authority to do this, and now the proposal is that they be mandated to do that.

- **Locke**: Could I add a question to that as they're talking? To get a better picture of what it would look like, we also ask if you could survey your members to see what's already being done.

- **Joe Lerch, *Virginia Association of Counties***: Madam Chair, Joe Lerch with Virginia Association of Counties. That's a good question, Chip. One of the things that was rolling in my mind during the presentation by Senator Ebbin is if it's a requirement, is it a requirement in [Title] 15.2 or is it a requirement in [Title] 10.1? If it's a requirement in 15.2, then there's obviously a local fiscal impact that we'd want to consider. If it's required in 10.1, then I think it would be DEQ that would be enforcing this potentially at the local level as it relates to what the recycling plans are. I think that's an open-ended question at this point.

- **Michelle Gowdy**, *Virginia Municipal League*: Madam Chair, Michelle Gowdy, Virginia Municipal League. That other part of that is—and I think Brian talked to it—the enforcement part of it and if that goes to the locality. I'm not sure, thinking off the top of my head, who in the locality is going to be available or able to do that, especially when some localities have private trash collection and some are locality-driven drive collection. So I think there are a lot of issues there that we're going to have to think through. And I'm happy to survey our members, though, absolutely. Thank you.

- **Toalson**: As some of you may know, I sold my house. And like a lot of people, sometimes I'm waiting for my new house to be built. A new smaller house, I'm happy to say, in the City of Richmond. So I'm in an apartment.

    - What would the cost be? Are they fifteen dollars a month or are they five dollars a month? I pay all those fees right now. So as an apartment owner, do you have an idea, Brian, what those costs are when they're passed along?

- **Gordon:** No sir, we don't know the answer to it on a per-tenant basis or even on a per-square-footage basis. We spoke to just a couple of members in advance of this meeting and got a couple of different examples of what they were paying. And it's different for each property. But the one example that we were able to get concrete numbers on was the smaller properties in Blacksburg where it was 8,000 for the five properties—again, very small properties—over the course of a year. So again, I don't think there are tremendous costs that are being passed on to the tenants, but they're not insignificant. I'm sorry I don't have more specific data for today's presentation.

- Toalson: I had one other question. I'm living in 895 square feet. One of our challenges, Senator, was where we put things. We found a place for our trashcan. Is the idea that you would have a separate second trashcan in your little apartment? I

know this, when I lived in Chesterfield County, every Friday they picked up garbage. And once every two weeks on a Tuesday, they came by and picked up our recycling. I know in that home, my wife made us have bins for paper and plastic and glass and tin. We had four bins in the garage, built-in.

- **Ebbin**: Well, I want to commend your wife, first off. Secondly, I lived in a 600-square-foot condominium in Alexandria, and there was no recycling to speak of. So what I did is I got permission from the board and I found a recycling company that would do it. This was years ago, and I don't know if this economic model would work at all now. I got them to do it for free because we had space for large containers. They would come every so often. Back then at least they would make money from selling recyclable materials. I don't know if that's the market anymore. But if your building had space for Toters or something, you could put them there. When you empty your trash, don't you empty your kitchen trash if it gets full more than once a week?

- **Toalson**: I don't do that.

- **Ebbin**: Well someone in your house—if you have several bags of trash, your building probably has somewhere onsite you can put it.

- Toalson: Yes. All I know is we have one big bin. It goes out of the sack. I was just thinking about the logistics of it given my new constraint of space.

- **Ebbin**: Sure, sure. As Mr. Gordon said, you don't force the individual tenant to recycle, you require the availability of recycling so that people can participate in it. I wish everyone in the world would recycle, but I'm not going to suggest that we have localities going through people's trash bags to see if they do, the way apparently they were doing in D.C.

    - So space is a consideration. The Commission might decide after research that localities could except apartments built before X year or apartments built before this year. But it's just not being done everywhere it should or available everywhere it should.

    - I think Ms. Gowdy might have asked or someone asked Ms. Gowdy about who would enforce this. I don't know who enforces policies to do with trash and refuse collection in localities. But perhaps it could be the same thing. Perhaps it could just be complaint-driven to avoid onerous cost to localities.

    - Basically what I'm looking for is somewhere to put your recycling if you want to do that in a way that's not onerous to existing apartment or condo buildings where there's no space for that. And I'd also point out with a pass-along we paid whatever the pass-along cost is for trash pickup. And this is another kind of trash pickup. Certainly it could make the cost go up. But we're in the twenty-first century, and we're limited on the space for trash in our landfills, and we know that recycling is a good thing. So over time it's something I just think we have to do.

- **Locke**: Are there any additional questions?

- **Lerch**: Madam Chair, Joe Lerch with VACO. I have just one thought in regards to Senator Ebbin's thought about a complaint-drive process.

    - If that's an avenue, probably it best be in [Title] 10.1 of the Code because there are regional DEQ offices that have waste management specialists that could respond to that. Not every locality has that type of personnel.

- **Locke:** I think they just resolved it.

- **Male:** Well, no, ma'am. We haven't resolved it yet.

- **Locke:** I don't think we're going to resolve it right here. So I think right now it's something that we can continue to do some research on and bring it back to our next meeting.

- **Ebbin:** Thank you, members of the Commission.

IV. Historic Properties not Located Within a Homeowner Association / Mandatory Disclosure of Relevant Information (SJ 80 Locke M. 2916)

- **Locke:** We'll move now to item number four dealing with historic properties not located within a homeowner association, dealing with mandatory disclosure of relevant information. This was Senate Joint Resolution 80, which was my legislation. And it came from the City of Portsmouth. I'll have Sherri Neil, the Intergovernmental Affairs Director for the City of Portsmouth discuss that. And she's brought two citizens from the City of Portsmouth to also discuss this issue.

- **Sherri Neil**, *Intergovernmental Affairs Director, Portsmouth*: Thank you, Madam Chair. Good morning, members of the Commission. Again, I'm Sherri Neil with the City of Portsmouth.

    - This particular issue was brought before us during our preparation of our legislative package for this past General Assembly session. It appears to be an unintended disconnect in the Code, as we see it, for disclosure of information as provided to persons who buy property that's in a home association that's a historic district. People who are not covered by a home association who might buy a property in a historic district is not given.

    - In Portsmouth, we have six historic districts. There are a few signs to indicate the strategic locations of these districts. There are quite often very few visual clues that clearly indicate the boundaries. Oftentimes, people are unaware that the specific property is in a historic district.

    - We have also sent out to you, if you had a chance to look at it, a PowerPoint specifically talking about historic district homes roof analysis. If you have a chance to look at page 19, you'll see there's a glaring difference between how

much it costs to replace a roof, a natural slate roof, compared to an architectural-grade asphalt roof. I'm not going to go into a lot of it right now. I may come back at the end of the presentation from our citizens.

- I have Ms. Terry Danaher from the City of Portsmouth with me, and Ms. Dawn Richardson. If it's okay with the Commission, I'd like to let them speak, and then I'll come back at the end. Ms. Danaher.

- **Terry Danaher**, *Portsmouth citizen*: Thank you, Sherri. Good morning, Senator Locke, it's good to see you again, and hello everybody else up there.

- **Danaher:** I'm Terry Danaher. I live in Portsmouth in Olde Towne.

  - I had talked to Sherri about coming up here because this is legislation that I actually had suggested ten years ago. So I've been sort of working on it for ten years. And I'd really like to see something happen with it.

  - I live in a historic house, and I am the current president of the Olde Towne Civic League. So historic preservation is very much on our minds as we are going through periods of flood and need to repair and do those things. It's becoming very obvious. I had a roof leak, so I had to have my roof replaced recently. So I am very, very aware of costs that are here as part of historic district living.

  - What I have found is our city council and the Historic Preservation Commission have had some recent conflicts. And Dawn is going to talk about that a little bit more. But I would like to point out that I've also been vice-chair of the EDA in Portsmouth. And I've been on the Housing Appeals Board where we dealt with things like repairs and renovations. So I am coming at this from knowledge and a base of understanding.

  - Anyway, I would like to introduce Dawn Richardson right now. She is a homeowner in Olde Towne. She runs a bed and breakfast from her home, in fact. She is currently on the Downtown Design Commission, and she is a former member of the Historic Preservation Commission. I'm going to let her speak for a minute, and then I'll come back, and then Sherri will entertain you further.

- **Dawn Richardson**, *Portsmouth citizen*: Thank you, Terry. Thank you, esteemed colleagues, for allowing me this opportunity to speak.

  - As Terry said, I'm on the Downtown Design Committee. I was previously on the Historic Preservation Commission. And I'm on the Executive Board of the Olde Towne Civic League. I own a bed and breakfast. I chose the house in the historic district in order to do that, and bought that going in.

  - In my experiences on the Historic Preservation Commission, we had several people come to the Commission that when they purchased their homes, they did not understand that they were in a historic district, and they didn't understand the impacts to that. We had a young woman who bought a house, had a large front

yard. She went in and she put up a chain-link fence in the historic district. They came to the Commission, and we said, "You have to take down the chain-link fence. It doesn't meet our codes." And she had this dog and she's like, "Well, what am I going to do with the dog?" And we're like, "Backyard." But the backyard was quite small. She said, "I wouldn't have bought this house if I had known that."

- We have a young navy couple that bought a house, didn't understand they were in a historic district. The house needed roof repair. They understood that the roof needed to be replaced when they bought the house. They didn't understand that it needed to be replaced with slate or with a slate-like material, the difference in cost there. The amount they paid for the house was about the amount the roof was going to cost.

- I'm a retired navy captain. We have a lot of navy and Coast Guard in Portsmouth, a lot of transient community. They move here and they want to buy a house, but they just don't understand the historic districts. When you drive around Portsmouth, you see these lovely little signs saying "Entering Olde Towne" or "Entering Parkview." But a lot of places have neighborhoods that are labeled and have names, but they don't have any requirements that go along with that. And these historic districts have requirements for everything that's external to the home. So the roofs, the yards, the siding on the houses, the materials that they use, the windows all have to meet the code.

- Are there any questions that I can answer at this time?

- **Locke**: Are individuals not told at the time that they purchased the house that they're in a historical district and what the requirements are for living in a historic district?

- **Richardson:** The two that I mentioned were not told. It was nowhere in their deed, and the real estate agent did not divulge that.

- **Dicks:** Virginia Association of Realtors. We have an existing statute. Just for the benefit of everybody, we have what's called a *red flag disclosure*. We're a buyer beware state where the buyer is responsible to determine what aspects of the property affect the buyer—things like whether there's a sex offender in the neighborhood, what's going to go on the adjacent properties, whether it's a dam inundation zone, whether it's in a historic district, all of these sorts of things. And the language basically says that the owner, the seller—who may or may not know that they're in a historic district, because historic boundaries change at the local ordinance level—makes no representations about whether any provisions of a historic district ordinance apply to the property.

- The purchasers are specifically advised to exercise whatever due diligence they feel is necessary to find out about the historic district, what limitations there are, including review specifically of any local ordinance and any official map that the locality may have—some localities have official historic district maps; some localities don't—and

in accordance with the real estate purchase contract. So one of the things that we train our buyer's agents to do—and I'd like to say to you that they all do this, but I'm sure that some don't. Just to be clear, the Virginia Association of Realtors, who represent 32,000 members—and there's 50,000 real estate licensees. So there is a universe of people that are not realtor members that don't get the training that the Virginia Association of Realtors tries to train our members on.

- What we've tried to do in this disclosure statute is to say these are a laundry list of things that the buyer should look at. We've updated this so that it's on the Real Estate Board website. All anybody has to do when they sign a contract, if they're represented by a buyer agent or if they're not, in the contract, there's a link to this Real Estate Board form. And the form lists all the things that a buyer should look at before they buy a house. We've been a buyer beware state since English common law. We've never been a seller who is a consumer has an obligation to specifically disclose certain kinds of things.

- I was looking back while both of you kind ladies were talking to see when it was we put the historical provision in the laundry list. It predates 2008 as far as I got back in the legislative history search. There are always people that will miss something when they buy a house. We get complaints all the time: "I didn't know I couldn't put a deck in my backyard." Well, we specifically said if you're next to the watershed or a creek, you're in the Chesapeake Bay Preservation Area. You need to go check that out before you buy the house and before you decide that you want to add a deck.

- With that background, my question really is, obviously there are some people who have fallen through the cracks on a buyer beware statute. But how would the mandate work on people that currently live in the City of Portsmouth or anywhere else? How would the mandate work when the sellers don't even know in many cases that they're in a historic district boundary that changes by local ordinance?

- **Richardson:** Let me say one thing and then turn it over to Terry, who's our main speaker.

    - I know when I bought my house there were statements for lead, there were statements for asbestos, there were statements for termites that all had to be signed by the seller saying that these were clear. So buyer beware in most circumstances, but it could be an additional thing on the contract saying that you are or are not in the historic district. All of the sellers that I have been involved with knew that they were in a historic district. It's not something that once you own the property you're unaware of.

- **Dicks**: Madam Chair, could I ask you one question? When you bought your property, how did you find out that you were in a historic district, local historic district?

- **Richardson:** I was looking at the local historic districts in order to buy a house that I could make into a small business, a bed and breakfast. So that was the requirement for me.

- **Dicks:** Okay, thank you.

- **Danaher**: I would like to address your question, too, because it's legit, absolutely. One of the things that came up when I was buying my house—and this was back in 2003—was it's in a historic district. The real estate agent's response to my question about it was, "It just means it has to look the same." And I am a stupid buyer, and I believed her. And I don't think she was being malicious. It's quite possible that that's what she thought.

    - Before I lived in a historic district, I lived in a house that was in a homeowners association in Northern Virginia**.** And one of the things that had to happen in homeowners associations, as you probably know by previous legislation, is that people who are selling the house have to give the guidelines of the association to the people who looking to buy the house. And the people who are putting a contract on the house have a certain number of days that they have to review those. They can say, "Oh, I can't live here because I have to put my satellite dish in the front yard," or "I want to put a chain-link fence up," or whatever. They have that option. And it just gives them time to see what they're getting into.

    - It seemed to me ten years ago when I was dealing with this on an appeals commission that it would be such a simple thing to do to say okay, you're in a historic district. There are published guidelines. We have guidelines for every—every district has their own. And these are the direct result of citizen input. We worked for two years with consultants in the city to get guidelines. And they are very clear and easy to read. Somebody might be put off by something like this, especially if they do a cost analysis.

    - You want a serious buyer to be prepared to deal with the house because the economic impact of historic districts is well known in places like our city. Our historic districts bring in tourists, and they provide endless employment because we are always repairing our houses. There are economic impacts associated with it. It seems to me that if you have something as cosmetic as where you can put your satellite dish, it has to be revealed to a buyer. It's something that has an economic impact not only on the place that you're buying, but on the person who is trying to purchase the house and is going to take care of it. It ought to be a little bit clearer so that you don't have a misunderstanding, and you have people who buy the house who can take care of it, who can live in the community happily. That's pretty much why we're here is just to make that one thing clearer.

- **Neil**: To Mr. Dicks' point as well, in your packages there's a little statement that came with our legislative program for 2015. And it refers to the Code section that you're speaking to for the homeowners association, which is § 55-509.5, which provides potential sellers of property within their association with certain information relating to the property to include permitted information regarding improvements or alterations made to the property that cannot be in violation of the, quote, "declaration, bylaws, rules and regulations, and architectural guidelines." That's in there for people who are buying in historic districts or property that's in a homeowners association. If you don't

have that, you're not going to get any of that information. So we see that as a bit of a disconnect in the Code, which is why we asked Senator Locke to bring this forward on behalf of the city to hopefully get it into the Virginia Housing Commission and maybe get a work group together to discuss it and try to come up with some kind of way to address that.

- My Planning Director could not be here this morning due to other commitments, but he did give me some other notes if I may share them with you.

- He says that, furthermore, historic district requirements can be quite extensive and expensive. We recently had a study, which I shared with you about the repairing of a roof, which Ms. Danaher just referred to and I spoke to briefly. In that, it goes from showing you where your material for natural slate removal starts from 60 to 85 dollars. Material and installation is 1,500 to 2,000 for a total average of 1,830, compared to architectural-grade asphalt, which is 25 to 35 dollars. Total average cost was 30 dollars.

- He further says that historic districts can be quite large, and without clear visual indicators to the untrained eyes regarding boundaries, without required disclosure, we should not be surprised that homebuyers are unaware of the extensive rules and regulations covering the exterior of their properties. Lack of awareness can lead to the unintended damage to historic elements when homebuyers perform repairs without proper approvals, unaware that what they are using, or doing, rather, may require special permits. And many of the structural elements cannot be replaced once damaged or destroyed.

- Historic home repairs and upkeep can be quite expensive and time-consuming. For the sake of both the buyer and the structure, there needs to be an awareness of the rules and the requirements that apply to a historic structure. There are homebuyers that cannot afford to make compliant repairs. And as consumers, they need help in being aware of what they are getting themselves into.

- And finally he says information regarding historic districts readily available, boundary maps and design guidelines, etcetera. Disclosure information greatly informs and helps homebuyers in historic structures, etcetera, but without adding much additional effort to the real estate agents and brokers. We should not hide these facts from buyers because real estate sellers are afraid they'll lose a sale. We see this as being consumer protection, and public disclosure should be first and foremost in the process.

- So that's why we're here this morning. We just ask that you consider.

- **Locke**: Senator Barker.

- **Senator George Barker**: This is a question for whoever wants to tackle it here. I think you're seeing, Mr. Dicks, some reticence about requiring the real estate [agent] and making them liable for that type of information provided at the settlement time. It

seems to me that a way around that might be if the city were in some way able or willing to assume that responsibility since it's the city that's created these districts.

- When we've been down in Portsmouth for various meetings, I frequently in the morning have gone running through some of your historic districts, and they do look very nice. I haven't tripped and fallen just gawking at the houses, but maybe next time. I think they are certainly very attractive.

- Has there been any thought given to how the city might be involved, directly or indirectly, in the process as an entity that would provide this information to a potential buyer rather than just tying it directly into the real estate contract and the realtor and the seller?

- **Richardson:** I'll take a stab at it. We didn't talk about it citywide because we realized that we're not the only historic district in the world, although we are the most important historic district in the world, obviously.

  - I would like for the record to say my father was a real estate agent, so I do not think all real estate agents are terrible people or anything. It's not about that. It really is about a contractual obligation, just saying, okay, you don't have the termites, you have to have flood insurance, you have to do this, and you have to do that. And, by the way, you're in a historic district, and this is what it's going to cost you to be here and to maintain your home.

  - It is in the interest of the other people who live in the district that people who come in and buy are able to take care of their houses. It has a huge impact on the entire community and on the city, ultimately. But it's not just our city; it's all across the state.

- **Locke:** Yes, Kelly.

- **Kelly Harris-Braxton**, *Virginia First Cities*: Kelly Harris-Braxton with Virginia First Cities. This is an important issue that you raised. I'm glad that you did raise it.

  - Homeownership in historic districts can be quite burdensome for anyone who decides to locate there. Also, there are lots of houses in those districts or properties in those districts that are not that expensive because they may need a lot of work for lots of different reasons because they're old. Certainly it can be attractive to someone who's looking for an inexpensive place to settle, and then they find out the roof costs as much as the whole house and they can't afford it.

  - To me, it seems like it's an important enough item to consider. I'd be happy to work on a work group for this because I think this is a very important issue that needs to be more noticed. The question of how the cities could be involved is something that we can look at. I don't know how they could at this point because they would have to be involved in every sale, and I don't know how that happens unless there is some requirement for clear designation of these properties.

- And then it's not just the designation, but it's also people understanding what does it really mean. Okay, I'm in a historic district. Well what does that mean? I know there's this buyer beware piece, but we want to make sure that people aren't putting asphalt roofs on a house that needs to have slate, and then have to come back and be overly burdened with having to replace it. Like the fence. Fences are expensive, chain-link or otherwise. So I think it is an important issue that we need to discuss, and I'm very interested in it.

- **Dicks**: Madam Chair, I understand we're talking about your bill.

- **Locke**: Yes, you are.

- **Dicks**: I'll start with that comment, Madam Chair. The one observation I'd make is you analogized to homeowner associations and condo associations. What happens in that practice is if I'm the owner of the dwelling unit, I request the association to prepare the packet in a disclosure format or a resale certificate in a condominium. And the association sends the package. So an analogous situation would be, to Senator Barker's point, that the seller request the locality, because you've got the boundaries, you've got the map, you've got all the requirements and everything else, and those requirements get updated on a regular basis. Ask the locality to send the packet of the historic information to the potential buyer. I don't know that you want to go down that road, but that's the analogous process.

  - On behalf of the realtors, we very much believe that buyers should be aware of what they buy when they move into a historic district, because it is expensive, it is burdensome, it's restrictive.

  - You might remember a few years ago we had legislation to define historic districts because some localities had said we're just going to declare this whole area a historic district without any rationale of the boundaries. So Delegate Marshall had a bill that better defined historic districts so it would at least be fair for the homeowners in that area, that they would be restricted by certain things in the Historic District Ordinance and go to the ARB or the Historic Commission or whatever is the appropriate governing body in that locality to get approval to do certain things.

  - At the same time, I guess obviously I'm willing to certainly engage in the discussion, but it's not an analogous situation where in a homeowners association the seller is putting together all of this information and giving it to the buyer. The homeowners association or the condo association does all that. And again, the analogous situation here would be the city has all the information. Whether this would be something that localities would want to undertake, I don't know. But I think we're probably fixing to hear that.

- **Richardson:** I would like to say that all our guidelines are online, so it really is quite a simple matter just to identify where, for someone in Planning, for instance, to say, yes, it's in a historic district. Boom, there's the information. Or tell the person where they

can find it. It's just a question of getting the information into the hands of the people who need it and who don't even know they need it—maybe. And that's the problem.

- **Locke:** Let's hear from VML.

- **Gowdy:** Madam Chair, Michelle Gowdy, Virginia Municipal League. I am certainly happy to participate in a work group and look into the matter. I can tell you it sounds like an unfunded mandate, which local government really doesn't like. And I have some other concerns about it, but I think probably working together might be the best option to look into it.

- **Locke:** I think you just volunteered for the smaller work group.

- **Dicks:** Madam Chair, if I could just make that one observation. That's exactly the way the real estate disclosure packet works now. It's referenced in the contract to a website at the Real Estate Board. So I guess an analogous situation would be here, you put that provision in the disclosure statute, and then in the contract there would be a reference. And you'd go to the city's website, and anybody that had any questions would contact the city and ask. They would end up doing that anyway. You contact the city to ask what limitations and what I can do with my property based upon—

- **Richardson:** I think you just did it. I think you just solved the whole problem.

- **Locke:** You're on it, too.

- **Flynn:** Mark Flynn. To follow up on it, with the HOA disclosure, the seller's real estate agent ends up having a role in that, right, because the seller's agent is the one who takes the first step to get that action going. Isn't that the way it works?

- **Dicks:** Madam Chair, what happens is the seller's agent makes the request. It can either be the seller or the seller's agent that makes the request. And then that's the way that disclosure packet works.

- **Locke:** Okay, I think we're going to have a smaller group to work on this and see what we can come up with to deal with this issue. And anybody who talked is on the group. So that means Chip, Kelly, Mark, George. You're on the group.

- **Neil:** Thank you. We look forward to working with you.

- **Richardson:** Thank you all very much. Thank you.

V. Ground Cover and Proximity to Buildings

- **Locke**: We're now down to agenda item number five, ground cover and proximity to buildings. This is Cindy Davis, Director of State Building Codes Office.

- **Cindy Davis**, *Director, State Building Codes Office*: Thank you, Madam Chair. I am here this morning to give you some information related to the current update process that's underway in Virginia as it may relate to the issue before this Commission related to ground cover.

    - Historically, if there's an issue that may be related to how a building is constructed, typically those things have historically gone through the stakeholder process during the code development update process. As I mentioned, it is currently underway. We have not yet published the proposed regulations. There are stakeholder meetings underway and have been underway for several months. We have another one coming up later this month for proposed changes. And we have the second half of the cycle, which if a proposed change is not vetted or a decision made prior, it can certainly be done so during the second half of the process. So I wanted to make sure that you were all aware of that, that we are in the midst of updating the building and fire code regulations from the 2012 to the 2015 Virginia Codes currently.

- **Locke**: Any questions? That was a big discussion during session.

- **Male**: I assume this is following up on Harrisonburg.

- **Davis**: Yes, yes. That particular issue was the item before you.

- **Locke:** Any questions?

- **Dicks**: Madam Chair, I don't have a question, but are we clear that this is being looked at in the building code work group? These issues traditionally have been looked at in the building code work group. I don't know that we need to address the issue in the Housing Commission except to receive whatever report the building code work group comes back with.

- **Locke**: All right.

- **Dicks**: Thank you.

VI. Public Comment

- **Locke:** We're now down to public comment. Is there anybody out there with some burning issue that they want to bring before the work group? If not, we are adjourned. Elizabeth, will you will come up with a date for the smaller group to discuss the issues?

VII. Adjournment

- Upon hearing no further requests for comment, Senator Locke adjourned the meeting at 12: 15 P. M.

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

Air B&B Work Group
Tuesday, May 10, 2016, 1:00 p.m.
House Room 3, The Capitol

I. Welcome, Introductions and Discussion of Work Plan for 2016 Interim

- Delegate Christopher K. Peace, *Chair*

II. Charlottesville and Air B&B

- Lisa Robertson, *Chief Deputy City Attorney of Charlottesville*

III. Ideal Legislation and Components

**Localities Perspective

- Neal Menkes, *Director of Fiscal Policy, Virginia Municipal League*

**Air B&B Perspective

- Edward Mullen, *Reed Smith, LLP*

**Hospitality Industry Perspective

- Julia Hammond, *Eckert Seaman's*

&

- Christopher Lloyd, *McGuireWoods Consulting*

IV. Adjournment

COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair
DELEGATE DANIEL MARSHALL, III, Vice-chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

Short-Term Rental Work Group
May 10, 2016, 1:00 PM
House Room 3, The Capitol

I. Call to Order

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

Members in attendance: Delegate Christopher Peace, *Chair*; Edward Mullen, *Airbnb Corporation;* David Skiles, *Travel Technology Association;* Erica Gordon, *Hilton Worldwide;* Eric Terry, *Virginia Restaurant & Travel Association;* Amy Hager, *The Bed & Breakfast Association of Virginia;* Sterling Rives, *Virginia Association of Counties;* Ron Rordam, *Mayor of Blacksburg, Virginia Municipal League;* Mark Haskins, *Virginia Department of Taxation;* Chip Dicks, *Virginia Association of Realtors;* Robert Bradshaw, *Independent Insurance Agents of Virginia;* Maggie Ragon, *Commissioner of the Revenue, City of Staunton;* Brian Gordon, *Northern Virginia Apartment Building Association*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Charlottesville Short-Term Rentals

- **Lisa Robertson,** *Chief Deputy City Attorney of Charlottesville:* In September 2015, the City of Charlottesville amended its zoning ordinance to update regulations applicable to for-hire lodgings located within residential dwellings. In the 1960s, Charlottesville had tourist homes, which offered temporary lodging that was defined as anything other than a hotel.
    - These were allowed in R2 zoning districts, and then eventually R3 districts. In the 1990s, the term "tourist home" dropped out of the ordinance but the term "hotel" had broadened.
    - In 2003, the city undertook a comprehensive overview of the zoning ordinance. Mixed-use districts, in recognition of new areas of development, came into play. The broad meaning of hotels was allowed in most of those districts.
    - In 2009, the City of Charlottesville amended its zoning ordinance to include special categories of bed and breakfast: bed and breakfast home stay, bed and breakfast, and bed and breakfast inn. This is also around the time Airbnb was established. Bed and breakfast home stay is the category that allows many of the Airbnb lodgings. It is allowed within owner-occupied residences.

- Once established, there was a blissful period of about six years when this system worked smoothly. Charlottesville, as a college town, is very much in favor of this type of lodging. In late 2014, a zoning administrator received a complaint involving a single-family dwelling. The homeowner allowed the home to be used by a bridal party. There was a lot of noise and revelry, and this was more than the neighborhood could take.
- As a result, we looked at a number of ordinances from around the United States. We didn't feel the need to start over but to tweak what already existed.
- In our ordinance, we have something called a home occupation, where one can operate a business from inside one's residence. This required a zoning permit. We included these homestays as a new type of home occupation.

- **Robertson:** One regulation is that home occupation has to be an accessory to a lawful residential use, which is customarily engaged in by people who live in a home. Other regulations deal with traffic, noise, and visual impacts. For new regulations enacted in 2015, we are requiring proof of permanent residence. There is a new requirement that residence in the home must be for 180 days of the permit year.
  - One is now required to leave contact information of a responsible party, so there is always someone available to address complaints. Under the old homestay, people were allowed to have food service. City officials determined that for use for the category homestay, the option of food service would be removed. As a condition of the annual permit, if there are three or more nuisance complaints, your permit can be revoked.
  - There are provisions of the statewide building code that may apply and tax obligations may apply. However, these issues are separate to zoning compliance. We have a statement that specifies homestays need to provide smoke alarms and extinguishers.
  - The city has tried to not get in the way but to ensure the regulations allow for a harmonious mixture of uses.
- **Eric Terry**, *Virginia Restaurant & Travel Association:* How many Airbnbs do you have permitted in Charlottesville today, and do you have a sense of percentage compliance?
  - **Robertson:** About 200 on Airbnb. Since the update, we've registered 60 new facilities in addition to the homestay we had under the previous ordinance.
- **Terry:** Are you collecting transient occupancy tax (TOT) and sales taxes on the 60 or the 200?
  - **Robertson:** The facilities that had previously been registered as homestays and new facilities, non-Airbnb, and homestays are paying this TOT, and we believe there are not many collecting sales taxes.

- **Delegate Danny Marshall:** For someone who wants to get their property accepted, talk to us about the process. Does city council have to approve this? Do you go back and survey neighbors?
    - **Robertson:** It is a simple application process, and usually we are able to send people to the commissioner of the revenue's office on the same day.
        - There has been discussion of whether we should notify neighbors that this type of use is occurring in their neighborhood, but ultimately city council decided not to go that route. We do not have the city council involved at all in the permit process.
- **Marshall:** Do you require a certain level of liability insurance or what level?
    - **Robertson:** We do not. We feel an insurance requirement was related to the zoning ordinance. It did come up.
- **Mark Flynn,** *Governor Appointee:* On the issue of being owner occupied, does the applicant have to be an owner not a long-term tenant?
    - **Robertson***:* That is the case right now. This item is still a little unsettled.
- **Amy Hager**, *The Bed & Breakfast Association of Virginia:* If someone is not living in the dwelling and is just renting the dwelling to short-term lodging, is that under the hotel regulations?
    - **Robertson:** That could be the place. It depends on the district. Business and mixed-use districts allow this.
- **Peace:** If much of the use of short-term rentals is a one-off transaction, how does the city do a permit for that property? Do you issue a temporary permit?
    - **Robertson:** We do not. This was also discussed. We also do not have the staff to monitor this use. It seemed to us that the single permit worked for everyone.
- **Peace:** Short-term use could be up to 180 days of one-off?
    - **Robertson:** It was important to city council that someone actually use each home as their residence, so the 180 days speaks to the time they want the owner to be a resident. This is going to be a difficult enforcement issue. There is an expectation that this is your primary and permanent residence.
- **Peace:** Did the council weigh the number of complaints about parties and noise?
    - **Robertson:** We took a look at police reports and noise violations at places that are rental properties. Complaints at hotels occur much less often. More noise complaints occur in R2 zones than in the lowest density zones.
- **Peace:** But was the city able to conclude that short-term rental was more of a nuisance than other types of dwellings?
    - **Robertson:** No. Noise complaints also must be substantiated in order for the permit to be revoked.
- **Peace:** There are no changes to how the city addresses parking or noise issues?

- **Robertson:** Correct.

- **Peace:** The permit application process is much less onerous than that of getting a special exception or conditional use?
    - **Robertson:** Absolutely.

III. Ideal Legislation and Components

Locality Perspective

- **Neal Menkes,** *Director of Fiscal Policy, Virginia Municipal League:* VML believes that public policies affecting public safety, taxation, and land use need to adapt to major economic changes but that the state must preserve localities' ability to protect all citizens and to regulate all types of businesses fairly and responsibly.
    - VML believes state and local policies should (1) encourage a level playing field for competing services in the market place; (2) seek to preserve and/or replace local and state tax revenues when a changing economy disrupts collections; (3) ensure safety, reliability, and access for consumers, providers, and the general public; and (4) protect local government's ability to regulate businesses whether they are traditional, electronic, Internet-based, virtual, or otherwise.
    - VML defends the use of local zoning authority in order to protect the public's health and safety and to preserve neighborhoods. Local needs that reflect special circumstances or unique conditions cannot be addressed by a statewide land use action that ignores neighborhood concerns, including affordable housing, criminal activity, parking, and noise.
        - Any legislative proposal must include local registration to identify, at a minimum, the owner (or "operator") and location(s) of the site(s). This is essential for administrative compliance and enforcement of state laws and ordinances. Local registration will also promote accountability of taxes imposed by city and town councils and boards of supervisors. Without local registration, there is no transparency.
        - 88% of the 75 cities, towns, and counties responding to a VML-VACo survey allow some form of renting rooms or entire houses. Renting rooms in a residence or renting entire houses is not without local government policies or precedents. This business activity in Virginia has been going on for centuries. Localities have tailored policies to changes in the marketplace. A "one size fits all" bill will upend local policies carefully drawn to reflect community values and local economic conditions.
        - 52% of respondents in the VML-VACo survey already require registration/licensure for renting a room in residential dwellings for periods of less than 30 days. This requirement is only partially driven by tax issues. Registration ensures that homeowners are providing a safe environment for the public.

- Operators (or their "platforms") should collect and remit local taxes directly to localities. This is not an overly burdensome requirement.
    - The business "Stay Charlottesville" collects and remits state and local taxes on behalf of the operator.
    - Without special legislation as was done for the local option sales tax, local revenues collected by the state require a state appropriation to be returned. Remitting local taxes to the state adds an unnecessary bureaucratic step. Any legislative proposal must justify the inefficiency of sending local revenues to the state instead of requiring the operator or platform to remit directly to localities.
        - Article X, Section 7 of the Constitution of Virginia – "No money shall be paid out of the State treasury except in pursuance of appropriations made by law."
- Audits of local transient occupancy taxes cannot be delegated to the Virginia Department of Taxation. Authority to perform such audits must remain with the commissioners of the revenue and local directors of finance.
    - Citizens should have confidence in knowing that local officials can collect, track, and account for all local tax dollars. Online platforms must cooperate with local authorities on tax enforcement and audit issues.

- **Peace:** Have you ever stayed at an Airbnb?
    - **Menkes:** Yes, and I had a positive experience.

Airbnb Perspective

- **Edward Mullen,** *Reed Smith, LLP:* Airbnb was founded in 2008. It's a trusted online marketplace for lodging. Airbnb is part of the Sharing Economy, which is a business model powered by new technologies and social tools. Starting in 2015, Airbnb launched an effort to work with governments all around the world to develop rules for limited lodging.
    - Key components in our 2015 Compact included helping ensure our community pays its fair share of hotel and tourist taxes; being transparent with our data and sharing information while protecting the privacy of hosts and guests; working with our community to prevent limited lodging rentals from impacting the availability of long-term housing.
    - There is great value for hosts, consumers, and other businesses and even government with home sharing.
    - We introduced a new bill this year that addresses two issues: The patchwork of local regulations governing short-term rentals and the issue of taxes owed by operators without a feasible means of collection.
    - We tried to set up a statewide collection and remission system with the Department of Taxation. The goal is to do so with one point of entry.

    - These are not hotels. These are people's homes, and they shouldn't be treated like hotels. We are happy to be working with you all toward a common goal. Home sharing is not going away, and it holds great value.
- **Ron Rordam,** *Mayor of Blacksburg, Virginia Municipal League:* Does Airbnb have a definition of what a residence is?
    - **Mullen:** I'm not sure that Airbnb's definition is material as much as the state's definition. I believe we had one in our statute, but I'm not exactly sure what it is.
- **Rordam:** How does this transcend occupancy limits?
    - **Mullen:** This would not have impacted that at all. Nuisances, the brothel rule, would not have been impacted by our legislation.
- **Rordam:** Is there a mechanism to pull a home from your website where a home is not a residence and it is advertised on Airbnb?
    - **Mullen:** I believe they do take complaints and work with local government on removing homes, but I cannot speak to that exact process.
- **Sterling Rives**, *Virginia Association of Counties:* The goal of assuring transparency with data while assuring privacy of hosts and guests: I'd like to hear what those privacy concerns are?
    - **Mullen:** I think the exact line of transparency and privacy needs to be worked out in this process. Our vision was that there was no registration at all. We are looking for application of general applicable ordinances. We were looking to help them pay taxes.
- **Rives:** To what extent do law-enforcement and safety officials need to know about short-term rentals?
- **Peace:** And long-term rentals.
- **Flynn:** With home occupation, the issue is the impact on the neighbors. What is your client's attitude toward that kind of authority?
    - **Mullen:** A generally applicable requirement, not specific to short-term rental, would not have been touched by our legislation.
- **Terry:** Has Airbnb looked into compliance with regulation?
    - **Mullen:** I think that is something that legislation can work through.
- **Hager:** What information are you collecting from the host?
    - **Mullen:** I wish I could answer that. I'm happy to provide it at a later date.
- **Peace:** How would I find a residence on the list?
    - **Mullen:** Going on the website, you find a listing that interests you. You make a request of the host. Then they may agree to let you stay in their home.
- **Peace:** So these are known locations?

    - **Mullen:** I'm not sure what's known until you get to a certain level of the process.
- **Flynn:** When I was looking on the initial level, you see the neighborhood, but not the address.
- **Maggie Ragon**, *Commissioner of the Revenue, City of Staunton:* In the legislation, limited residential lodging for fewer than 45 days does not constitute a business. How did you arrive at that number?
    - **Mullen:** The effort here was to have a specific rule. We started with 90 and then cut it in half. There is no perfect number; this is just the one we came up with.

Hospitality Industry Perspective

- **Julia Hammond,** *Eckert Seaman's:* The hospitality industry is a large industry. Basic regulations have to do with ABC licensing issues, zoning, building code, fire suppression, carbon monoxide, parking, permitting, innkeeper rules, health department and inspection, pools, refrigeration, pest control, and insurance.
    - The hospitality industry welcomes competition, but we want a fair and level playing field.
- **Christopher Lloyd,** *McGuire Woods Consulting:* If we are going to deal with this from a tax perspective, zoning perspective, let's deal with all types of properties. People are taking on entire homes or multi-unit buildings. The concern is they don't comply with the long list of regulations. We need to deal with the "illegal hotel" issue.
    - If someone is running a business from their home, that should be treated as a business.
    - Regarding de-listing, rentals that cannot demonstrate compliance with laws should not be allowed to use the hosting platform.
    - Transparency regarding rentals should be listed with Tax ID/license information and a method for reporting violations.
    - Regarding accountability, just like hotels, tax collection and remittance information should be subject to audit by the state and locality.
    - Regarding data collection to assist with tourist promotion, aggregated stay information should be available to tourism offices.
    - These are our general concerns.
    - **Flynn:** When does a home occupation become a business? How does this process work for you?
        - **Lloyd:** There was an alternate bill the hospitality industry put together. There is a provision in Virginia tax law that if you have gross receipts in your homerun business of more than $4,000, then that is a threshold if you are subject to local licensure and tax. We picked that as an arbitrary standard.

- **Ragon:** Did I hear correctly that Hilton operates 150 properties in the Commonwealth?
    - **Hammond:** Yes.
- **Ragon:** So then you turn over thousands of guests in a year and would be collecting and remitting occupancy taxes to localities. And that is common?
    - **Hammond:** Yes.
    - **Lloyd:** Having one set of rules for everyone would be great. The hotel industry complies with 138 standards, and they continue to make it work.
- **Terry:** The Expedia group is able to collect taxes properly. It's not an insurmountable task.
- **Peace:** Do you agree with the Charlottesville rule that a permit is not needed for a one-off rental?
    - **Lloyd:** I agree that a locality can determine what is right for its community. A statewide model of some uniformity makes a great deal of sense.
- **Peace:** Is that equally on the land use preemption side as well as the tax side?
    - **Lloyd:** I think it makes sense to have some uniformity with collection and remission of taxes. The concern was the lack of transparency and accountability that went along with that.
- **Peace:** Can you speak to the enforcement of that mechanism?
    - **Hammond:** Comparing rules with local zoning and statewide collection, local zoning is for the primary personal resident. Collection and remission was for anyone listed on Airbnb, which includes other types of properties, so they're not quite comparable.
- **Peace:** Because the legislation was silent to the non-primary resident, your concern was that the statewide law would occur for that use without the statewide zoning standard?
    - **Hammond:** I believe it was for all properties on Airbnb, and they wouldn't be differentiating.
- **Peace:** Is it your opinion that localities would not be prohibiting secondary residences?
    - **Lloyd:** A number of localities are undertaking action to prohibit or permit this. We already have the locality's rules, and then the state comes in and wipes the slate clean.
- **Peace:** We should look into how to address things that are already in place. I believe the hospitality industry commissioned the Penn State study.
- **David Skiles**, *Travel Technology Association:* Do you have a set number of meetings? Is there going to be draft legislation?

    - **Peace:** We have a next meeting set, but we don't have a set number of meetings. The enactment clause does speak to draft legislation.
- **Rives:** I would like for this group to look into public safety.

IV. Public Comment

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

V. Adjourn

- Upon hearing no further request to comment, **Delegate Peace** adjourned the meeting at 2:55 PM.

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
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VIRGINIA HOUSING COMMISSION

Short-Term Rental Work Group
Thursday, July 14, 2016, 1:30 p.m.
House Room 3, The Capitol

I. Welcome and Call to Order

- Delegate Christopher K. Peace, *Chair*

II. Primer on Airbnb Mechanics

- Jillian Irvin, *Public Policy Director Airbnb*

III. Tax Implications

- Mark Haskins, *Virginia Department of Taxation*

IV. Property Owner Association/Property Manager Concerns

- Pia Trigiani, *Community Managers Association*
- Brian Gordon, *Apartment & Office Building Association of Metro Washington*

V. Legislative Comment

VI. Adjournment

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission

Short-Term Rental Workgroup
July 14, 2016, 1:30 PM
House Room 3, The Capitol

Delegate Chris Peace , *Chair,* called the meeting to order at 1:30 P.M.

Members in attendance: ; Senator George L. Barker;; Delegate David L. Bulova;; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee;* Delegate Christopher Peace, *Chair*; Edward Mullen, *Airbnb Corporation;* David Skiles, *Travel Technology Association;* Erica Gordon, *Hilton Worldwide;* Eric Terry, *Virginia Restaurant & Travel Association;* Amy Hager, *The Bed & Breakfast Association of Virginia;* Sterling Rives, *Virginia Association of Counties;* Ron Rordam, *Mayor of Blacksburg, Virginia Municipal League;* Mark Haskins, *Virginia Department of Taxation;* Chip Dicks, *Virginia Association of Realtors;* Robert Bradshaw, *Independent Insurance Agents of Virginia;* Maggie Ragon, *Commissioner of the Revenue, City of Staunton;* Brian Gordon, *Northern Virginia Apartment Building Association*

Staff: Elizabeth Palen, *Executive Director of VHC*

I. Welcome and Call to Order

II. Introductions

- **Delegate Christopher K. Peace**, *Chair*:
  - First on our agenda is the primer on Airbnb Mechanics, Jillian Irvin, Public Policy Director for Airbnb. This was a special request from members of our workgroup who thought it would be good to know how it works before we continue on in the conversation that we've embarked on on how to facilitate these types of transactions in the Commonwealth in a uniform manner.
  - Jillian, welcome to the workgroup. I know that you have slides you'd like to present. Copies are also in our packet and they'll be posted online for anyone who would like to see them after the meeting.

III. Primer on Airbnb Mechanics

- **Jillian Irvin,** *Public Policy Director, Airbnb:* Hello, everyone, my name is Jillian Irvin. I'm the Public Policy Director for Airbnb. I'm based here on the East Coast, although the company itself is based in San Francisco. It started in about 2008 based on the idea of sharing people's homes. So if you don't know anything about it, I'm going to go through kind of a brief primer of how the process works, so you can follow along in the packets you have or on the screens if you can see that.

    - Basically, Airbnb is a place in which you can rent out either an apartment for a night, a castle in the South of France for a week, or this crazy looking villa for a month. There are a variety of different types of accommodations on the platform itself.

    - The point of Airbnb is to connect hosts and guests with a unique travel experience. So these are people that are looking for something kind of outside of the traditional hotel experience.

    - We've grown since 2008 to really create a global community. We operate in pretty much every country in the world other than Iran and North Korea. We are part of this growing, sharing economy. I know a lot of the organizations and company up here you've probably heard of. If you haven't heard of them already, you will be hearing about them soon.

    - The point of the sharing economy is really to allow people to use underutilized parts that they already have, whether it's their car with Uber or it's an extra furniture piece that they have and they're going to sell it on eBay. With regards to Airbnb, it's an extra room that they have in their house or a vacation rental that they might have. They're able to make money off of that and it's outside of something that's more of a traditional business.

    - Our community here in Virginia I will read for you. In 2015, we had 3,500 hosts in the Commonwealth. The average age of host is 44 years old. The number of nights that a person incoming to the state would stay was about 3.9. There were 122,000 guests that were welcomed into the Commonwealth. The average age of that person was about 35. And as you can see, we had quite a few more people as outbound tourists using Airbnb on the platform outside of Virginia than we had coming in. We had 232,000 outbound residents that are using this platform elsewhere.

    - Basically how it works is that you can check in. You get a user name on the platform, and we do a verification of your identification to make sure that you actually are who you say you are. And when someone opens their home to you, you're actually the person that you claim to be.

    - You can go and search, which I'll show you later, to see exactly which type of accommodation you want. It can be a room, it can be a shared room, or it can be

an entire home listing. You send a request to the host at the time you would like to have the calendar dates for the room. The host then decides independently of Airbnb whether or not they want to take this person as a guest. So it's completely up to them. It can be that their calendar was booked up, and they made a mistake on those days, and they don't want the person to come to their home if it's not available for those days.

- At the time that the host actually accepts the booking, we collect the money from the guest. We will hold that money until the first 24 hours of the accommodation is actually being used. So after the first 24 hours, that's when we'll send the money to the host to collect. At the end of the entire stay, much like an eBay transaction, but the host and the guest rate each other. So there is a common sense of everyone acting on their best behavior because they know that at some point they're going to get rated on this, and they won't be able to use Airbnb again if they have a bad rating. So there's an incentive for everyone to kind of behave themselves.

- If you log into Airbnb.com, this is the front page that you get. Here is where you type in where you want to go. Then you put the dates in, the number of guest, etc., you hit Search. And depending on what you're looking for and what device you're looking for, you'll get the accommodations that are available on those days.

- The platform itself will operate on a laptop, on your iPad, and/or on your cell phone. This is just kind of a sample of one of the very nice listings that we have in Paris that would come up if you searched for Paris on a particular day. Here's another one that we have in San Francisco.

- The booking itself is a two-sided model. This is broken down for just the ease of the numbers. Let's say that a host decides to put up their room for $100 a night. If it's a $100 a night, what we would collect at the time of is $109 from the guest. There is a 9 percent guest fee that we would take from the guest at that time. Then the host at the time of the first 24 hours of the guest being in the host home, they would then get the $100 from their booking, minus $3 that we charge as a 3 percent host fee. So we take 12 percent—9 from the guest and 3 from the host. The host will walk away with $97, and the guest would be out $109.

- This is broken down in the booking page that would be the last page you get to when you're using Airbnb. This is in euros. I apologize. I didn't have one for dollars. There's a cleaning fee that's up to the host that's added onto it. There's a service fee that we charge. And on areas that we are collecting and remitting taxes, we will then have a line item for the occupancy taxes as well. That's broken down before you request a book.

- The payment page, again, breaks down all of the service fees and the cleaning fees that you get. This is where you go through the payment. At this point, after clicking Accept, the money would actually be transmitted to Airbnb, and would

hold it. After the reservation is done and you've gone home, you'd get this receipt that once again breaks down everything. Gives you more information on where the listing was, etcetera, number of nights, and where you stayed. The host gets something very similar to this so they're able to keep track of all of the information.

- Lastly, this piece I wanted to talk about is our trust and safety. We are working throughout the 2008 and beyond years that we've been in operation to make sure that it's a very safe platform. One of the ways that we do this is by identifying that the host and guest are who they say they are. It's never anonymous. You're letting a potential stranger into your home, but you know that that person has had a background check, and there are some safety requirements, and that there is an out. If something does go wrong, the Airbnb is constantly there.

- Landlords can ask for an actual third-party criminal background check on someone that's coming into their home or into their apartment building. Through the platform itself, we'll be able to provide that for them.

- All hosts and guests have to agree to our Community Standards and Good Neighbor Policy, which basically just goes through . . . don't be a jerk. Don't go and trash someone's house, etc. In the off chance that that does happen, we have a 24-hour, 7-days-a-week support line. We have one in Portland, Oregon. We've got one in Dublin. We have one in Singapore. So you're able to get someone at any hour of the day. You're able to call in and complain and have them deal in real time with whatever the issue is.

- In the case that something terrible happens, we do have a million dollar insurance policy on every trip that covers both the host and the guest. So if the guest property were to be damaged, we could cover that. If the host property were to be damaged, we could cover that as well.

- As I mentioned earlier, we also have an online review system after the booking has happened so that both the host can see what the guest has been rated, and the guest can see what hosts have been rated before. So before you're going and staying in someone's home, you've seen the comments that people have left from previous stays.

- So that is my kind of brief overview of Airbnb. Chairman Peace, I'm assuming there might be some questions for me. If I can answer them, I'll be glad to.

- **Peace:** Okay. Does any member of the workgroup have a question for Jillian? Yes. Delegate Bulova.

- **Delegate David Bulova:** Thank you, Mr. Chairman, and thank you for that presentation. I have two questions that hopefully you'll be able to answer. One is on the background check aspect, because you mentioned that twice talking about verifying who an individual is. And I think you talked even more about potential

criminal background checks. I guess what I'm wondering is does that include things like sex offender registries so that you don't have somebody who would normally be prohibited from living in a particular home because of its proximity to a school or other public place.

  - **Irvin:** Yes. That's something that would be flagged. If you were a guest, you wouldn't be able to become a guest on the platform. If you were a host, you wouldn't be able to host either.

- **Bulova:** Okay, thank you, that helps. Second question. You had mentioned the 24/7 complaint hotline, which is great. I guess my question is, is that accessible to neighbors? And how would a neighbor know that they could avail themselves of that complaint hotline if there was an issue?

  - **Irvin:** That is a great question. We just launched a neighbor complaint hotline. I don't have the number in front of me, but I can definitely get it to you. It's something we put on our website and are encouraging our hosts to tell their neighbors about. But it's something that we need to get more people to be aware of. There is also a 24-hour neighbor complaint hotline.

- **Bulova:** Thank you.

- **Peace:** Further questions or comments from member of the workgroup? Mr. Terry.

- **Eric Terry**, *Virginia Restaurant and Travel Association*: Thank you, Mr. Chairman. Jillian, you said in the answer to that question that you were able to kind of restrict individuals who have a criminal background or whatnot. How do you handle jurisdictions, like Richmond, for example, where Airbnb has been illegal for a period of time? How do you restrict those or do you restrict those at all?

  - **Irvin:** As of right now, we're trying to work with the different communities that our hosts are operating in. It's incumbent upon our hosts to be in compliance with the law, but we are willing to work with and try to figure out the bad actors and take them off the platform.

- **Terry:** Thank you very much.

- **Peace:** Delegate Knight.

- **Delegate Barry Knight:** I received a letter here a month or so ago from the mayor of the City of Virginia Beach. He said that they had someone who went through Airbnb. I don't recall. I know it was a shooting; I don't know if it was a murder involved. I believe it was a murder. When the police came, the person that owned the house I believe was from China or somewhere like that, and they didn't know how to contact the homeowner. They didn't know that it was Airbnb. They just didn't know what to do. So in a situation where Airbnb facilitates the renting of somebody's house and there's something like a murder at the house, how does the local police force know

who to contact, who's the owner or whatever, short of going to the courthouse and looking at the records at 3 a.m.?

  - **Irvin:** I think it would be similar to the same situation of someone that was just renting. I don't know exactly the difference between Airbnb in that situation and any kind of other rental. But I may not understand your question entirely. Is it just getting a hold of a homeowner or actually dealing with the shooting itself?

- **Knight:** Well it was probably both. I represent the Sandbridge area. Typically, they have a real estate company, and when the police go there, they know that they have to contact Sandbridge Realty. Here, they didn't know who to contact or how to get in touch with the owner or anything. If Airbnb is going to facilitate this, how do local authorities know that you are the go-between?

  - **Irvin:** I think that's exactly why we need legislation. There needs to be a process through which we're able to identify the host. And in a situation right now, there isn't any legislation, so there's no way in which the company is communicating with the government. We're trying to figure out a solution for exactly that.

- **Peace:** Further questions or comments, Delegate Knight? No. In our first meeting, Mr. Rives had asked us to consider public safety issues, and that's something we are definitely going to be looking at and working through this workgroup process. If I recall, the Charlottesville City attorney was asked whether Airbnb locations are any more or less safe than any other location. Her answer was no, and that's in the record. Mr. Rives.

- **Sterling Rives,** *Virginia Association of Counties***:** Thank you. I have a related question regarding public safety. If I were to decide to rent a home through Airbnb as opposed to staying in a Hilton, for example, what type of assurance would I have that that home had functional smoke detectors or carbon monoxide detectors? How would I know if the wiring was safe or if the house were structurally sound?

  - **Irvin:** So we require all of our hosts to be in compliance with local zoning ordinances. So if smoke detectors and carbon monoxide detectors were required in the house, we're expecting them to be in compliance with that. They then verify that their house does have all of those things. We're working right now on a system in which we actually send photographers into the listing and take photos, and then they'll be doing the check to make sure those things are actually there.

- **Rives:** I'm not sure I understood. First of all, that wouldn't be a zoning requirement; that would be a building code requirement. But there would be no inspections of that house to determine that it had functional smoke detectors, for example.

  - **Irvin:** No. The house would be a house like any other on the street that doesn't get checked but people would be living there.

- **Rives:** That's right.

- **Peace:** Do you have further questions, Mr. Rives?

- **Rives:** I was just going to say that the distinction would be that I would be traveling across the country to stay in a house. And if I got there, I wouldn't know whether the smoke detectors were working or not when I set out to go on that trip. In my own home I know that they're working. So I think that's the type of issue that local governments would like to see addressed in one way, through this legislation or otherwise.

- **Peace:** Yes. And I think we're making note of that as well. Mr. Bradshaw has some information for a subsequent workgroup meeting because that may raise questions of liability insurance and those matters that do relate to public safety as well. Mr. Skiles.

- **David Skiles**, *Travel Technology Association***:** I have a question more for my personal edification. How often are smoke detectors in hotels checked?

- **Ron Rordam:** Typically, hotels go through an annual inspection that's done by the local jurisdiction. The brands in fact require the exact same inspection. So the brands will come in on a branded hotel on a regular basis and inspect those items, as well as the local jurisdictions; they have to go through inspections as well. Things like bedbugs and all those things are all part of that inspection process?

- **Peace:** I have a question regarding the background checks. Can you walk everyone through how the background check process works?

    - **Irvin:** It's changed; I don't want to give you the wrong information. I can provide it for you if you would like it.

- **Peace:** Yes, if you could provide it to us, we'll put it on the website as well and offer that to every member of the workgroup.

    - **Irvin:** Sure, absolutely.

- **Peace:** Mr. Bradshaw.

- **Bob Bradshaw**, *The Independent Insurance Agents of Virginia*: I don't mean to have my back to you. If a host wants to have a copy of the insurance policy, the $1 million insurance policy, to compare it to their homeowner policy, can they get that?

    - **Irvin:** I believe so. You would have to ask one of our insurance specialists in the San Francisco office. There is an insurance page that we'll go through as a host.

- **Bradshaw:** We've looked at what's on the website, and it's really not very helpful.

    - **Irvin:** Okay.

- **Bradshaw:** Frankly, insurance is state regulated, so a homeowner policy in Virginia could be very different from a homeowner policy in North Carolina. So it's very critical that a host have the insurance policy that you all provide to look for any gaps of coverage that they have on their homeowner's policy. Can you give me who it is I need to contact?

    - **Irvin:** Sure. I'll give you my card as well and make sure that you're able to get that information.

- **Bradshaw:** Thank you.

- **Peace:** Thank you, Mr. Bradshaw. Yes, Mr. Gordon.

- **Brian Gordon**, *Apartment and Office Building Association of Metro Washington*: Thank you, Jillian. I just want to thank you because you've been very good and open with talking with me over and over. I look forward to getting the information on the background checks. And I guess my question is, how thorough are Airbnb's background checks? I think that would be very helpful to all of us to know. I know in the past, it's been more you know who the person is and they definitely live there. So this is a change in what you've done, and it's going to be more thorough that what it was?

    - **Irvin:** Yes. We've gone through three iterations of it. When the company initially started in 2008, there was not as robust of a system. We've built up that team and build up a third party that we use to do the background checks. We just did have a change, which is why I don't want to give wrong information. I need to make sure that it's actually what we're doing now.

- **Gordon:** So if somebody's already signed up with Airbnb will they go—

    - **Irvin:** They'll be rerun.

- **Gordon:** So I want to sign up again, which I'm signed up now, you will go back through to make sure that there's nothing back there that the host needs to know about.

    - **Irvin:** That we didn't catch the first time, yes.

- **Gordon:** Okay, thank you. Let me ask you a little bit, if I can, about registration. I know that's a big question that we're going to deal with, should Airbnb be registered, should it not. I mean should each of the houses register. And again, we call you all out saying Airbnb, but it really is short-term rental. The case now in Virginia Beach where they needed to get hold of the owner, to have some sort of registration if somebody wants to have a short-term rental of their house, to have that registration through the locality would be very helpful to answer all those questions. What is Airbnb feeling about registration right now?

- **Irvin:** As you all know, it is a startup, so we're constantly changing and reevaluating the stances that we've had. We recently did pass a bill in Chicago that we allowed for pass-through registration, which we think kind of gets to exactly your concern. Basically, a host would register with us, and we would then pass on that information to the City of Chicago. We saw it work on the city level. Don't know exactly how that would work on the state level. But I think that it's something we're going to be looking at for this task force to kind of look through.

- **Gordon:** We're not just dealing with Airbnb, it's dealing with all short-term rentals in the legislation I think that we're talking about. That's one of the areas that I hear from localities that registration is so important to know. It's great that you all are going to do that. But if somebody else has a short-term rental through somebody else, we want to know that. It's very important for if there's an emergency situation or you have to respond to something or the neighbor has calls into the police saying what's going on next door. They can give them the toll-free number you all set up or here's what's going on. So I think as we go through this it's something to consider. I'm glad you all are thinking about doing that and passing it on. But as we look at every short-term rental in our localities, that's important.

  - One thing you said I want to clarify a little bit is the difference between a lease situation and a short-term rental. Just sort of talk a little bit about localities' concerns with it. I live in a college town. Two years ago I had a fraternity house behind me. They were good guys, but they were a fraternity house. They were there for a year, and I got to know them, and we had discussions. It turned out to be as good as it could be. I have acquaintances who have purchased a property on the lake. After being there for a couple of years, there is a short-term rental next door every weekend. So most weekends they're going through the same situation that we went through behind us but with different people. So they're not able to build that relationship. So could you kind of help me with it? To me in my mind, it's not the same as a long-term rental because you're not building that neighborhood networking and responsibility.

    - **Irvin:** Right. And I think that's exactly what we're kind of working on with this neighborhood tool. We don't want to change the quality or the nature of a neighborhood. So if it is some place where it's more of a long-term rental place, we don't want to disturb or have any issues. So we are willing to and are looking at regulations that will allow for making sure that doesn't happen. One of the ways we can do that is making sure that the neighbors are comfortable with the hosting that's going on in the property nearby.

- **Gordon:** Okay. The only other point I'd kind of want to throw out, because we talked before about how zoning would still kind of be an overlay, when you have a zoning violation, you have 30 days to correct it. You have a house in the neighborhood with over-occupancy, and it's for that weekend, it's a zoning violation. But by Monday, it's corrected. And then you go through the same thing over and over again. So I think as

we look at these different issues, that's something. Zoning won't always come in and fix it because it takes a long process to go through. A letter has to be written and there's all the time to correct it. That's just something else we've talked about with Airbnb or just short-term rentals.

  - **Irvin:** Okay.

- **Peace:** Mr. Mayor, does that complete your questions?

- **Gordon:** Let me make sure. For now, yes, Mr. Chairman.

- **Peace:** I appreciate that. Those are good questions. Yes, Amy.

- **Amy Hager**, *Bed and Breakfast Association of Virginia*: Jillian, we've talked a few times. I'm also speaking with Tammy at Airbnb. The question that I'm getting from the legitimate properties who want to advertise on Airbnb is, what do we do right now about collecting and remitting our taxes? So they collect their taxes if they're on any other websites, plus their own. The advice from Airbnb right now is to wrap the tax into the list price and list it on the website.

  - **Irvin:** It's only when we're collecting or remitting on behalf of the host, right?

- **Hager:** Exactly, when Airbnb collects. When a legitimate property who is collecting taxes wraps that price in and that's what's advertised, that means Airbnb right now gets to collect commission on the tax money that's being collected and remitted by the legitimate businesses?

  - **Irvin:** That would be true, yes.

- **Hager:** Okay. The other question that I've been getting a lot lately is what doesn't the insurance policy cover? From my understanding from opening properties is that a homeowner's insurance is void as soon as there is exchange of money for the service. Is that when your policy comes in to cover them or is liability included with your policy?

  - **Irvin:** I'm not sure if the first part of your comment was correct, so I don't know how to answer the second. I know that if and when something does occur during a hosted situation with a guest, then is when our policy will come in. It doesn't touch the homeowner's insurance itself.

- **Peace:** It wraps around it.

  - **Irvine:** Yes.

- **Hager:** So if they only have homeowner's, then your policy will cover it.

  - **Irvin:** Yes, I think. Say that again.

- **Hager:** They only have homeowner's, meaning they don't have liability coverage. When they do operate a legitimate business, they have to have liability.

    - **Irvin:** Exactly.

- **Hager:** So yours is liability.

    - **Irvin:** Yes.

- **Peace:** Is that any different, if I might jump in, than if I'm a homeowner and I have a party at my house—we have a lot of parties—and I might even have an ABC site banquet license for other activities, I would be smart to get a rider on my homeowner's policy to cover that event. Is that right? So yours is somewhat analogous to that kind of scenario. Is that what you're saying?

    - **Irvin:** Yes, exactly.

- **Peace:** Okay, very good. There are a lot of questions about insurance. I've taken notes on that, and staff has, and public safety generally. We are going to have Mr. Bradshaw and others, once he gets a chance to connect with Airbnb and other short-term renters, to further flesh that out. So thank you. Do you have any further questions? Okay. Delegate Bulova.

- **Bulova:** I have a quick follow-up question on enforcement. I imagine that your system is set up that if you got a bad actor who is using a property and there is a complaint against them or you get multiple complaints that you're going to boot them off of the system.

    - **Irvin:** Yes. We have certain zero-strike policies. Absolutely if something egregious were to happen, we would be able to take them down immediately.

- **Bulova:** On the flip side, let's say you have a property. The property owner might not technically be doing anything wrong, but you've also got habitual use of the property that gets complaints. Is there a way to say hey, enough is enough, you as the property owner are going to get penalized because your residents or your users are perpetually being bad actors in the neighborhood?

    - **Irvin:** If by property owner you mean the host, then yes, absolutely we would take them down if there were repeated bad actions. We do try to cure the situation by contacting them and saying hey, this has been brought to our attention, maybe by the neighborhood hotlines. But if it were egregious enough, we would take them down immediately. If not, we would give them one or two chances and then be able to take them down.

- **Bulova:** Is that subjective or is there an actual standard that says hey, two strikes, three strikes?

    - **Irvin:** There's a three-strike policy.

- **Bulova:** There are three strikes, okay. Thank you.

- **Peace:** Senator Stanley, welcome to our workgroup. We are so glad to have you as a member of the Housing Commission.

- **Senator William Stanley:** Thank you. It's very nice to be on this Commission. I've been reading all over this. I'm trying to catch up in understanding what issues are here. I ask for a series of questions. I'll try not to be a mayor and just stick to a senator, but that may be worse.

    - I'm reading your Responsible Hosting statement, which of course is right here. It goes over certain things that the host should be doing and maybe not be doing. It says we encourage you to pay your taxes, follow the zoning rules, and be a good neighbor. But there's no obligation. It's just telling them what they should do, but there's no corollary obligation for them to do so. Why not?

        - **Irvin:** Partially because we're an international operation. The laws and rules that we have for our hosts throughout the world are going to be different. The requirements that we have on the website need to be generic to cover all of that. If it were to be a particular area and have each thing out, we just have the bandwidth in which to do that.

- **Stanley:** I was looking at how you do have a policy in there encouraging them to find out what the tax policies are in the localities where the host has the home that they're renting out. But it also seems to me from what you just said to me and to us here on the Commission where you—let me make sure I get this right—encourage the host to wrap the tax price into the overnight stay price. Is that right?

    - **Irvin:** If that is their concern. It's required upon them to pay the taxes. If they want to wrap it into the price and know that and bump the price up, it would still be the hosting price for the accommodation.

- **Stanley:** And you would participate in helping them find that out or allow them to do that, is that right?

    - **Irvin:** The price they're going to be paying or the price they post their home for is entirely up to them.

- **Stanley:** Wouldn't you then by in fact be taking a commission on taxes if they did that?

    - **Irvin:** No. That is the amount of money that they take home, and then they are going to be reporting the percentage for taxes out of that.

- **Stanley:** And that's minus your Commission, correct? It's $100 a night, but I have 10 percent in taxes, so it's 110. You're taking your percentage commission on the 110 not the 100. Isn't that true?

- **Irvin:** This is exactly why we're here trying to talk about legislation, so that we can deal with exactly this situation.

- **Stanley:** I guess what I'm saying is right now that's the policy. If somebody decides to bump up by 10 percent, a $100-a-night room to 110, you're taking the commission on the 110 not the 100, right?

  - **Irvin:** It's not a line item. There's no way for us or anyone else to know what the taxation piece would be.

- **Stanley:** Why not?

  - **Irvin:** Because the price that the host posts their accommodation is entirely up to them.

- **Stanley:** But you're encouraging them right here in your Good Host Good Neighbor Policy to wrap that tax price into the price, and then you take the commission. There is no formulation of extracting that tax price so you're only taking commission on the price, not the tax that they're withholding or charging extra. Right? I've read this whole thing. I'd like to see that you're not taking a commission on taxes that people are choosing to add on to the short-term rental, but you are, unless we have some kind of mechanism to change that. Is that right?

  - **Irvin:** That's exactly why we're coming to the state to look for a change to fix that. We cannot step in and collect and remit without the state authorization to do so.

- **Stanley:** Looking at the responsible hosting, I would encourage everybody if you haven't looked at it yet, I think that's something that's important in trying to discern how we go about this potential legislation. It seems like that's the only training you have for hosts, that is please read this. Is there any other training for hosts for short-term renters, the people that are renting these properties?

  - **Irvin:** What do you mean by training?

- **Stanley:** They're hoteliers, in a sense, or at least they're renting out their places. You tell them about minimizing hazards and stuff like that. You encourage them to at least disclose if there are cameras. Is there any kind of training? They're hosting people and with that comes certain liability. As an attorney, I know that some people are not educated on those liabilities.

- **Peace:** It's a licensee versus not.

- **Stanley:** That's right. I don't see where the liabilities are really explained to people that might affect their homeowner's insurance. I had a beach house that I rented out. I don't even know if there's an insurance product for this. The potential pitfalls for the host don't seem to be spelled out. Other than "read this," there doesn't seem to be any

training through Airbnb for the potential host, which could leave the potential host in a serious liability position if something were to happen. Is that right?

  - **Irvin:** No. We do have training beyond what is actually written on the website. We do have yearly what's called Airbnb Open in which we go through exactly that. We've got podcasts that people can listen to as well to encourage them to talk to other hosts in the community, figure out exactly what's working. We will contact them if they do have a problem and walk them through some good hosting tips.

- **Stanley:** Again, this is my lawyer hat being on. So you encourage them to read this policy. You don't do any training. In terms of compliance, do you get them to certify "we will comply or face penalties"? And if so, what are those penalties if they don't comply with minimizing hazards with disclosure of cameras? We live in a digital society where people have cameras all over the house. This could be a trap for someone to put cameras around the house and be peeping using their own house to a renter. What happens? Do you say, "I promise I'll comply," and if they don't there are penalties? Have you figured that one out?

  - **Irvin:** If we were to find out about something like that, we would take them off immediately obviously.

- **Stanley:** You just kick them off. You don't have any other penalties?

  - **Irvin:** Other than not being able to host anymore, no.

- **Stanley:** Okay. What if a local government comes to you and says that renter A on Airbnb is not complying with their tax policies, not paying their taxes, what do you do?

  - **Irvin:** We're trying to figure out a way in which we can step into the shoes of our host and collect for them. We're trying to mitigate situations exactly like that.

- **Stanley:** I'm encouraged by that. If I remember correctly when we were here, there were news articles in Richmond on how Richmond disallows and specifically makes illegal short-term rentals. But Airbnb came in here and flouted the law anyway. I'm concerned that perhaps you're not going to be good partners with our localities if there is a tax discrepancy, and that is the non-payment of tax by the host, or there's a zoning problem. Who do they go to? Do they go to you or do they go to the host?

  - **Irving:** They would go to the host. Let me clarify about where the liability actually falls here. Airbnb is the platform in which people are hosting through. So people here in Richmond that decide to be on the platform are posting their home on it. It's not incumbent upon Airbnb, and it's not something that Airbnb is looking into whether or not they're in compliance with certain regulations. That's incumbent upon the actual citizen that lives here.

- **Stanley:** Mr. Chairman, if I may. That gets me to my point exactly. When you go to the bottom of this Responsible Hosting page, it says, "Please note that Airbnb has no control over the conduct of hosts and disclaims all liability." Is that true?

    - **Irvin:** If it's on the page, it's written in our policy.

- **Stanley:** Airbnb's policy is basically disclaiming all liability that might arise from the host's actions to the renter, to the guest, right?

    - **Irvin:** If that's what's written on the page, I'd have to double-check it. But if that's what's written there . . .

- **Stanley:** As lawyers when we write things, we always put stuff in the contracts, you know that. But how do you think you can disclaim liability generated by a host that doesn't comply either with your suggestions here or commit some kind of liable act that results in the injury of a third party who comes and rents their place overnight? You're conducting both ends of this transaction, which is you're advertising the property. And by advertising the property, it seems to me that you're warranting that it's habitable, and it's intended use, and that it's going to be a good place and a safe place, and it's a nice picture. And then you control the transaction, which is controlling the transaction in accepting the money after advertising. The third party gives the money, and has an expectation, and then you disclaim all liability if there's a problem from the host.

    - **Irvin:** I'm sorry; was there a question in that?

- **Stanley:** Yes. How can you do that?

    - **Irvin:** How?

- **Stanley:** Yes.

    - **Irvin:** As you know as an attorney, we do put that language down. We do then have the $1 million policy that will protect against issues that happen.

- **Stanley:** Can you explain to me how your $1 million policy is in effect? I carried Uber legislation. And it was a concern for us to make sure that we were protecting not only the driver, the Uber driver, but also the person, the very precious cargo of the Commonwealth, our citizens, in the back. If you disclaim all liability from any action by the host, when does this liability kick in for a third party that comes in, rents a place, and is injured due to the negligence of the host?

    - **Irvin:** As soon as they would make the complaint, we would go through the formal process that we always do and make sure that they were taken care of. I can get a copy of the insurance policy if you would like and if that would make you feel better. I'm confused as to where the actual question is.

- **Stanley:** Ma'am, it's a very direct question. Nothing is going to make me feel better except knowing that the people that are going to be renting these places have a reasonable expectation of safety and of privacy and to make sure that we are not creating a whole host of liability, which for Delegate Peace and myself might be very profitable for our industry. Quite frankly, that's not why we're here.

- **Peace:** Yes, please don't say that.

- **Stanley:** My question is again, when does the policy kick in? That was a very direct question. If you disclaim everything from the host—host, we have no liability for the owner of this property. We are not liable for the owner. When does it kick in to protect the third party who rents?

    - **Irvin:** As soon as the guest enters the host home, we have insurance that's going to cover the entire time of their stay.

- **Stanley:** Insurance coverage, when there's a claim that is covered. But how can it be covered if you're claiming that you disclaim all liability from the host, for any action of the host?

- **Peace:** I think one of the questions that we want to answer in the subsequent workgroup is what is the privacy of contract between the host and guest, the invitee versus the licensee issue that you're bringing up, and whether they should have a policy. I believe some of the legislation this past session actually offered that. So that is certainly on the table.

- **Stanley:** And I don't think we really took care of it. The thing is right now we have a transaction here where the host is really offering the house, but they're controlling both ends of the transaction and disclaim all liability coming out of it. In a great world, that would be wonderful. But that's not how reality works in the Commonwealth of Virginia.

- **Peace:** I don't think that they can disclaim the liability of the host, stepping into their shoes and doing that. I don't think they can, but we're going to find out and answer that.

- **Stanley:** I have two more questions, because I've been writing them all down. I read this Penn State study where it says in 12 or 15 major cities that you're in, at least 30 percent of those hosts using Airbnb are renting their houses 365 days a year. That's not a short-term rental. That's a hotel. I had to get a special in Charleston to rent my house out.

- **Peace:** And at that point, Senator, it would not be their primary residence.

- **Stanley:** That's correct. Are you going to notify the local government that that's occurring? You're going to have that information. That's going to be confidential. So what are your triggers to notify the locality that they've crossed the line out of short-

term rental and are actually doing this or have multiple units and are using your platform not in the way it was intended?

  - **Irvin:** Those are all part of the negotiations that we are having across the country, across the world with cities and localities to deal with exactly that.

- **Stanley:** Because you disclaim all liability for the host, do you believe that that will ultimately be your responsibility to have that kind of relationship with our localities? Can you promise to me that you'll do that?

  - **Irvin:** No, I cannot.

- **Stanley:** Okay. Thank you, Mr. Chairman.

- **Peace:** Thank you, Senator. I appreciate it. Are there further comments or questions? I think this nice lady wanted to ask one.

- **Peace:** Okay, very good. Mr. Mullen would like to have the floor.

- **Edward Mullen,** *Reed Smith*: Mr. Chairman, just to hopefully close this up. A number of the questions I think Senator Stanley is asking are very good ones, and they're good ones for courts, not necessarily for the legislature. But on the tax issue that he started out with, fundamentally the responsibility of the host is we brought a bill this year to try to set up a collect and remit system whereby we could help with that.

- **Peace:** Are there further questions or comments for Jillian? I think we have one last one.

- **Rordam:** Thank you, Mr. Chairman. I have a comment and a question. Back to the question the senator asked. There are innkeeper laws that we comply with, that hotels comply with that kind of restrict and require you to do many of the things that he brought up. The question comes back to the compliance and your comment. Is there a written policy of when someone is delisted and when they can come back? What's the criteria on the strikes? Is that something we could have a copy of?

  - **Irvin:** It's not something that we share publicly.

- **Rordam:** Okay. If you won't share that publicly, how does the mayor of Blacksburg know what you're going to do in the Town of Blacksburg?

  - **Irvin:** That's why we're working on regulations to deal with these issues. Right now it's just something that's up to the company.

- **Male:** That's interesting.

- **Peace:** One last question, Mr. Rives.

- **Rives:** I promise that my questions are easier than Senator Stanley's. I think the 24/7 hotline is a great idea, and it's a good step forward. But I'm not sure I understand how the neighbors of rental property or local code enforcement or law enforcement would know that if they have a problem at a house that it's Airbnb that needs to be called as opposed to some other platform or whether there is a platform at all. If you we don't have registration of short-term rental properties, what mechanism is there for local officials or for neighbors to know who to call, who to complain to?
    - **Irvin:** There currently isn't one.
- **Rives:** Do you think it would be a good idea to build into whatever legislation comes through—some sort of mechanism that would assure that people know who to call?
    - **Irvin:** Absolutely, that's what we're here to discuss.
- **Rives:** Okay. And it seems to me that registration is the obvious way to do that.
    - **Irvin:** There are several ways to do it, but that is one, yes.
- **Rives:** Thank you.
- **Peace:** And I think Mr. Rives knows that the realty community has long opposed registration of their rental properties, which possess some similar challenges. So we'll probably have to have that on the table as well when you open the door to that.
- **Rives:** That's a great idea.
- **Peace:** I know you think that, that's why I said that. I know you agree. We have taken a pound of flesh from this nice lady. Are there last questions that have not been asked of her? Yes. Please state your name, if you don't mind.
- **Maggie Ragon**, *Commissioner of the Revenue, City of Staunton*: If I as a locality am aware that I have a host in my locality and that that host is not collecting and remitting as has been suggested, so they're in violation of the locality ordinance and requirements, and I report that to Airbnb, would that be an offense with which you would declassify them as a host?
    - **Irvin:** No.
- **Ragon:** Should I ask why not?
    - **Irvin:** Because we're trying to work with localities to be able to collect and remit. We don't think that most of our hosts are really sophisticated enough to figure out the nuances of the tax codes. We're trying to figure out a way to ease that burden for them so that we're actually able to ensure that things are happening, so even if you don't know that someone's on the platform or is or isn't collecting, we're guaranteeing that they are.

- **Ragon:** So just two follow-up comments to that and not another question. If the folks that we do have are sophisticated enough to get that and are doing that, and if we did have that listing, then we would be able to work with them on that. Thank you.

- **Peace:** Thank you all very much. Thank you, Jillian. I appreciate it.

IV. Tax Implications

- **Peace:** Next we have Mark Haskins from the Virginia Department of Taxation. He may be wanting to leave before he takes the lectern.

- **Mark Haskins**, *Policy Development Director, Virginia Department of Taxation*: Thank you for warming them up, Jillian.

- **Peace:** This is the point of the workgroup, so I think it's great.

- **Haskins:** I'm technology challenged here, so hang on just one second.

- **Peace:** Mark, thank you for working on this issue for the last eight months and for your diligence and for your creativity.

- **Haskins:** I'm Mark Haskins. I'm the policy development director of the Department of Taxation. We were contacted back in December to start working on this with the legislature, Delegate Peace, last fall.

    - I'm going to talk mostly about state taxes. There are state taxes that apply to these transactions and local taxes. The Department does not have a responsibility or an obligation or the authority to collect the local taxes, so I'm just going to briefly talk about those. Delegate Peace, if you all would like a presentation on local taxes, it probably would be better served by having someone from one of the localities to talk about it.

    - I want to open with retail sales and use tax. In Virginia, the retail sales and use tax is a very narrowly applied tax to sales of tangible personal property. Virginia taxes fewer services than practically any other state. However, one of the services that Virginia does tax is the sale of transient accommodations. And the sale of transient accommodations means the sale or charge for any room, lodging accommodations furnished to transients for less than 90 continuous dates by any hotel, motel, inn, tourist, camp, camping ground, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for consideration. It's a broad definition, but it also is limited. It only applies to the entity that is providing the room. It doesn't apply to entities who just make arrangements for providing rooms. We'll talk about that a little bit more.

    - In Virginia, the general sales tax is 5.3 percent. That includes a 1 percent local option tax that is imposed by all localities. There's an additional seven-tenths of

a percent that's imposed in the Hampton Roads and Northern Virginia regions. There it's a total of a 6 percent tax. One percent is the local option, .7 percent goes back to those localities for transportation purposes. It's very dedicated.

- As I said earlier, the retail sales tax is imposed on the gross proceeds from the sales or charges for hotels and rooms furnished to transients. We started off with a sales tax in 1966, and we knew what a hotel was. It was pretty easy to apply the tax because a hotel and a motel, they had a big sign out front, and we knew they rented rooms to transients. So most of the rules were developed based upon that model.

- We dealt with over years additional charges that are made in connection with a rental of a hotel room, and that could be considered part of the charge for the room, and that's also subject to tax. That would include the charge for pay-per-view movies, television, video games, local telephone calls, and similar services. So when you rent a hotel room and you get a bill for some of these issues, the Virginia retail sales tax applies to those. It would also apply to any markup charges made for local. It does not apply to long distance phone charges.

- Internet access services and toll charges for long distance telephone calls furnished in connection with the rooms are not subject to the tax. But separately stated charges for services provided by outside vendors that are not required to be purchased by the guest, such as dry cleaning services, golf, tennis lessons, and beauty services, are not subject to tax. Separately stated charges for travel protection insurance are not subject to tax. So generally it's the amount you pay for the room and things that come with that room.

- The Department has long held—and we cite in the presentation a couple of public documents, one from 1987 and one from 1991 that are available on our website—that the operation of a bed and breakfast is subject to the sales tax in the same manner as it would be for a hotel. It started off in 1966. We had hotels; we knew what they were. We knew what motels were. Bed and breakfasts came along, and we said they meet the definition. They're providing rooms to transients for less than 90 continuous days. They're acting like a hotel or a motel. The same tax is going to apply there. And in the same way, extended-stay hotels and similar lodgings are subject to the sales tax until you get to the 90 days.

- It does not apply to accommodations supplied to a guest for a period of 90 continuous days or more. If you rent the room, you're going to be charged tax for the first 90 days. Once you get over 90 days, then the tax does not apply.

- The next issue the Department dealt with in the evolving world of transient accommodations was online travel companies. This is not Airbnb. We're talking about the hotels.com, the Expedias of the world. They operate somewhat differently than these hosting platforms where Airbnb operates. The online travel companies enter into contracts with accommodation providers to allow guests to reserve accommodations on their online website. Most of these companies don't

have any physical presence in Virginia, and these companies don't own the rooms. They don't provide the rooms. All they provide is the intermediary connection. They make an arrangement with the hotels to say if you have any extra rooms, we will rent them for you at a reduced price. They have a deal with the hotel of how much they pay for the room, and they also have a price that they charge to a guest who goes through an online travel company.

- That's been the subject of legislation several times in the last 10 years with the General Assembly over how should the tax be collected on that. Should the tax be collected with an online travel company? Should it be collected on the amount the hotel gets for the room or should it be collected on the amount that the online travel company charges for the room? The Department issued an opinion in 2006 that said these companies are not subject to tax because they don't provide the rooms themselves. They don't own the rooms. The hotels own the rooms, and the tax is charged on what the hotel charges for the room. So under Virginia law and our interpretation, the tax with an online travel company rental is paid on the amount the hotel gets, not on the amount that the online travel company gets for renting that room.

- Again, that's been an issue around the country. It's been litigated in multiple jurisdictions. There has been legislation in different states, different localities. So far, any legislation to change that has failed in Virginia. So in Virginia, if Hilton used Expedia—I'll pick on Hilton since my friend from Hilton is sitting right here. If they used Expedia or hotels.com to rent a room and they gave the room to Expedia or hotels.com for $70, and Expedia rented the room for 100, the tax would be paid on the 70. The tax would be collected by hotels.com, remitted back to Hilton. Hilton as the hotel has the rooms, that's who the tax is applied to, and they would remit the tax on what they got for the room, not what the room was rented for. That's been an ongoing issue in Virginia for the last several years.

- Moving forward to 2016, we start dealing with hosts and hosting platforms.

- **Senator George Barker:** Mr. Chairman?

- **Peace:** Senator Barker, I heard his voice.

- **Barker:** Yes. I have just a quick question. If the hotel rents the room to Expedia or whoever, and Expedia does not rent that room, is a tax collected on the $70 that Expedia paid for that room even though no one stayed in it?

  - **Haskins:** My understanding, Senator, is that unless they rent the room, they don't pay anything. They have the right to x-number of rooms at a particular price, but they're not buying the rooms and re-renting them. They just have the right to x-number of rooms. So there's no tax unless it's rented.

- **Skiles:** Mr. Chairman?

- **Peace:** Yes, Mr. Skiles.

- **Skiles:** Can I just answer Senator Barker's question? It is a contractual relationship that an online travel company has with a hotel. So if the room goes unrented, there is no cost to the online travel company. So Mark is exactly correct. If that room doesn't get rented, it's in the hotel inventory.

- **Barker:** The hotel didn't get any money; the state doesn't get any tax.

- **Peace:** Please carry on.

- **Haskins:** So now we come to the host and the hosting platform companies. Many property owners are seeking to rent out their primary residence utilizing the website hosting platforms. As you heard, it enables the owner to list and arrange for the property's rental. From the Department's perspective, hosting platforms are not offering guest rooms for rent. Just like the OTCs, the online travel companies, are not renting rooms, the Airbnb in the hosting platforms don't have rooms that they rent. So there is no tax obligation in Virginia on the hosting company. The obligation is on the host.

    - If you go back to the definition of what is a transient accommodation that is subject to the sales tax, it is any other place in which rooms, lodges, space, or accommodations are regularly furnished to transients. None of the rooms belong to Airbnb or any of the other hosting platforms. They belong to the homeowners. So the homeowner is the person who is making the transaction. They have the room. They're renting it out just like a bed and breakfast, just like a hotel or motel. So the tax obligation from the state and I believe the local perspective lies with the host, not the hosting platform.

    - As I said earlier, we have a long history of interpreting the tax to apply to temporary rentals or private residences based on the sales tax treatment of hotels. We apply it to bed and breakfasts, the OTC, and on down the road. In each case, what you have is a charge for lodging, space, or accommodations that are regularly furnished to transients. And that's the key in Virginia law. Again, if it exceeds 90 days, then the state sales tax would not apply.

    - Hosts offering up private residences for temporary rental in Virginia, they're in Virginia, they have a physical presence, we have the authority to collect the tax. And the host has the obligation to register and pay the tax, other than the case when it's an occasional sale. An occasional sale by statute is when you engage in an activity for three or fewer occasions. So if I rent out my room once a year, that's an occasional sale. But if I'm in the business of doing it, I do it more than three times, and I'm registered with Airbnb or one of the other hosting platforms, then I'm regularly engaged in business providing transient accommodations. The host needs to register, collect, and remit the sales tax.

- **Peace:** Mark, may I ask a question on that? When you say three times, is that three nights? What is the unit when you talk about a time?

    - **Haskins:** It's three separate occasions within one calendar year.

- **Peace:** An occasion might be if someone dies and there's a weeklong whatever you call it, wake kind of thing, and we want people to come into town. My neighbor will rent their house out. A week could be an event.

    - **Haskins:** A week could be an event.

- **Peace:** So you could do that three weeks a year or a month, for example. So it's really pretty unlimited at this point, even though you say it's three events.

    - **Haskins:** Right. The other part of it, which I really hadn't gone into, is whether you're regularly engaged in the business. I think from our perspective, if you were advertising through Craigslist, Airbnb, you're in the business of doing this. Maybe you're not a very successful businessperson and you only do it three times a year, but you're in the business.

- **Peace:** Mark, just one last point and then I'll let you carry on. Thank you. I have a river house. And I have three events that I consider June, July, and August. I could have someone come to my river house, to your question about the lake or whatever, and I could have somebody rent that and pay me. I could put it on Facebook as a platform and do it, correct, three times. If it's not more than three times, I'd be okay.

    - **Haskins:** You're getting close. You're skirting. We may need to talk afterward, Delegate Peace.

- **Peace:** I disavow that question.

- **Haskins:** State law currently requires each host to register with the Department, collect and remit the tax on the rental transaction based on the location unless it's an occasional sale.

    - Now, how many hosts are actually doing this? We don't have any data. We don't have any way of verifying when someone registers with us. There's not a box they check to say we are an Airbnb or we are some other company using a hosting platform and this is why we're registering. We don't have any data on that, but just anecdotal evidence, and from what I'm hearing here, and the experience that Charlottesville had, I would suspect that of the 35 to 4,500 hosts that are currently working with Airbnb in Virginia, there's a very small percentage of those that are registered with the Virginia Department of Taxation and doing this as the law requires.

    - From a compliance perspective, is it worth sending an auditor around to everybody's house, knock on the door, and ask if they rent their house? No, that's probably not something we want to do.

- What the Department has done in the past with similar types of arrangements, and not necessarily in the hotel or the hosting platform arena, but where you have multilevel sellers, we have administratively allowed an aggregator—and we're talking a Mary Kay, an Amway, those types of transactions, flea markets—instead of each individual person who sells Mary Kay or each individual person who sells Amway registering, we'll let a district level person register, take on the responsibility to remit the tax from each of the people who work under them. So we have done this administratively.

- When that happens, each individual does not have to register, just the district level or the aggregator registers. We have a pretty standard agreement where the company is required to maintain records and transactions at the corporate offices available to the Department. But we don't typically ask for the name of each of the individuals. We say okay, this person has agreed to take care of all of the sellers who come under them.

- When we first started talking back in December about what turned into Senate Bill 416 and the resulting House bill that Delegate Peace had, we looked at this and said administratively we do something like this now. We have a process where we administratively let one company or one person aggregate and remit the tax on behalf of a lot of people. If there are 3,500 or 4,500 or 5,000, it certainly makes more sense to have one entity responsible for remitting the tax and registering than to have each of the entities, each of the hosts remit. Plus it's easier compliance, it makes our life easier, it makes their life easier. You don't have to file returns every month. You don't have to go through the registration process. So when this was presented to the Department, we looked at it and said what this bill would require the Department to do at the state level is very similar to what we have done administratively, and it would just codify what we have the authority to do anyway.

- What was different about the legislation that was ultimately introduced is it would have required that the Department collect not only the state retail sales and use tax, but the local transient occupancy taxes. And as I said earlier the Department has no authority to collect any of the local or regional taxes absent legislation such as Senate Bill 416. Whether that goes forward or not, that's certainly something that would require legislation if the desire is for us to do that. Like we would do at the state level, we could do it at the local level, too.

- Now I'll speak just very briefly on local transient occupancy taxes. Any county by ordinance may impose a transient occupancy tax at a maximum rate of 2 percent on hotels, motels, boarding houses, and other facilities offering guest rooms. Some counties are authorized by statute to impose the tax at higher rates. Generally, any tax above 2 percent is dedicated toward tourism. So there's a long list of counties who have the authority to collect a higher tax.

- At the transient occupancy county level, while the state has a 90-day continuous requirement before you don't have to pay tax, there's a 30-day requirement.

That's one difference. But generally when the state tax applies, the local transient occupancy tax is going to apply to the same transaction with that one exception.

- Cities and towns have authority to impose a tax without any rate limitation in Virginia. According to the Weldon Cooper Center's annual tax rate books, 36 cities, 76 counties, and 73 towns have reported that they impose the local tax.

- In addition to the local transient occupancy tax, in 2013 House Bill 2313 imposed a 2 percent state regional transient occupancy tax in Northern Virginia that's administered and collected locally in the same manner as a transient occupancy tax. That money, like the .7 percent, is dedicated to transportation needs.

- That's a brief overview, and I apologize for my lack of abilities to work the overhead. I know you all don't have any questions. Senator Stanley has no questions.

- **Peace:** We're going to pass by Senator Stanley's questions.

- **Haskins:** I believe Senator Stanley used up all his questions on the first presenter.

- **Peace:** I'm just kidding.

- **Stanley:** I only wrote five down here.

- **Peace:** Comedy is hard. Senator Stanley.

- **Stanley:** Thank you. What I see here is that there is confidentiality of the host, and we've been discussing this. So how do we track who's an Airbnb host and who's not in terms of the state? How are we going to be able to collect that data and track that data?

  - **Haskins:** Under the legislation that didn't pass, there was a confidentiality of the name of the host. The Department had worked with Airbnb. We felt comfortable that Airbnb was going to be the taxpayer. We may not know the name of the particular host, but they would tell us that they had 32 hosts in Hanover County, 42 hosts in Franklin County, and that host #1 collected this amount of money and remitted it. Host #2 collects that. So our view of the legislation that didn't pass was that Airbnb would be the taxpayer, and we would review their records of income statements and that type of thing. We felt comfortable we could track it through.

- **Stanley:** Mark, does the Department of Taxation have real concerns? I felt uncomfortable that they were even addressed in the old bill, but do you have concerns about the inability to audit and track tax payment data here? I think it was the attorney general in Maryland or maybe the comptroller of Maryland in an article said, "I've got some real problems here of how we're ever going to accurately be able to track and

compile this data accurately to make sure that we're not missing out on tax revenues." Do you share those concerns?

  - **Haskins:** I think we share the concerns. Our goal is to try to collect the tax revenue. I see this as a much more efficient way to collect it than what we have today. It's an improvement over what we have today. Is it perfect? No, it's not perfect.

- **Stanley:** In thinking about what this system is, because it would be unique, at least of what I can think of in my mind, how many other taxes does the Commonwealth of Virginia collect on behalf of local governments where there's no ability to track or audit the payments?

  - **Haskins:** I guess what comes to mind is the communications sales tax. That money gets distributed back to the localities. The Department has the authority to audit. The localities do not have the authority to audit. And the audit data is not provided to localities. That's just one example that comes to mind, Senator Stanley.

- **Stanley:** Okay. You heard my question about they are basically charging a fee to the transient—let's call it a transient. We have historically had a transient occupancy tax. The tax is paid by the transient. The hotel collects and remits, but the transient bears the cost. I asked the question if a host decides he's going to wrap that payment, that tax obligation into that payment, it seems that Airbnb is then taking a commission off the tax that the man is collecting even though he didn't say he's collecting it so he can pay the tax. How do we track that? How do we take care of that?

  - **Haskins:** That caught my attention too, listening to it. In Virginia, you cannot absorb the tax or include the tax in the base. It has to be separately stated in Virginia, unless you have permission. So going forward, our expectation would be that the tax would be a separate item, not rolled in. There wouldn't be a commission on top of the tax.

- **Stanley:** Just following in that line, let's say you're renting for $100. That's what I used before. Shown to the transient, the renter, is the $9 collection fee that Airbnb takes. The host never sees that collection number; he never sees the $9 going to Airbnb or whatever that fee is. Now we're not collecting from the homeowner. Is it 100 or is it 109 or a hundred and whatever they've taken?

  - **Haskins:** The Department would see the tax would be on the $100.

- **Stanley:** Not the 109, even though that was charged to the transient who usually pays the transient occupancy tax in Virginia.

  - **Haskins:** The $9 is a fee that's going on between Airbnb and the host. That's coming out of their pocket. We're seeing the room rented for $100, so we would expect to get the tax on the $100.

- **Stanley:** Mark, in that $9, there is a nexus because it's a host who lives and has property in Virginia who is then using this platform. Is that $9 that goes to Airbnb taxed under the state tax system here?

    - **Haskins:** If Airbnb has a physical presence in Virginia and has nexus for corporate income tax, for income tax purposes Virginia would collect income tax from Airbnb.

- **Stanley:** And finally, Mark, if any kind of hosting platform like Airbnb entered into an agreement like we're talking about on centralized tax collection, in order to be accurate on the collection and remission, would that be considered a public document? Because confidentiality seems to be the cornerstone of Airbnb. But I don't know that we can do this.

    - **Haskins:** As far as the companies that we have agreements with, the aggregator companies, the Mary Kays and that type of stuff—and I'm just using those names off the top of my head because it's not with the companies, it's with a district level person—those are confidential. Any of those agreements the Department has for any aggregator are confidential and we can disclose those.

- **Stanley:** But any agreement on centralized tax collection and remission between the hosting platforms, the agreement would be a public document. Would you agree with that?

    - **Haskins:** Maybe I'm not understanding the question, Senator Stanley.

- **Stanley:** All right. If a hosting platform entered into an agreement for centralized tax collection and remission to the Commonwealth of Virginia, would that agreement be a public document?

    - **Haskins:** Absent this legislation, if they just came to us and wanted to do one of our standard agreements, it would not be public. It would be protected because it would have the name of a taxpayer in it.

- **Stanley:** Thank you. Mr. Chairman.

- **Peace:** Thank you. Mr. Flynn.

- **Mark Flynn,** *Governor Appointee*: To liven things up a little bit, I'd like to get into constitutional law, if I may, which of course, Mark, you've been skating around constitutional law this afternoon. Last year's legislation had the *shall register* versus *may register* debate. And there was the nexus issue. From the local government's perspective, the transient occupancy tax is clearly—there's no question it's owed when that transaction occurs.

    - **Haskins:** And the state's position is the retail sales tax is definitely owed.

- **Flynn:** I'm not talking about sales tax, right. What's your sense of how to accomplish getting it paid with the *Quill* decision, with the nexus issue? Do you think the nexus is there for an Airbnb?

    - **Haskins:** I think the *may* took care of that because you can voluntarily agree. We have a lot of companies that don't have a physical presence under the *Quill* decision in Virginia that collect and remit sales tax as a convenience to their customers. But as far as our ability to go out and enforce it, we are limited by the U.S. Supreme Court decisions.

- **Flynn:** If I may follow up, then, do you have a sense of how to balance those two issues, one being the tax needs to be paid, and then on the other hand we are trying to come up with a comprehensive system for collecting it. You know the obvious difficulty with the *may* register is that a company, a hypothetical company may choose not to register.

    - **Haskins:** I agree. I guess what this working group is here for is to resolve that issue.

- **Peace:** Was that your last question?

- **Flynn:** I have a quick follow-up on the point. Mark, just to point a fine point on that, in your view, would it be constitutional for the Commonwealth or for a locality by ordinance or by statute to require a hosting platform to collect and remit on behalf of hosts?

    - **Haskins:** It may be constitutional if the hosting platform is in Virginia and they have a physical presence in Virginia.

- **Flynn:** If it's absent that.

    - **Haskins:** Absent that, if the state passed a law it would probably be suspect constitutionally based upon what the U.S. Supreme Court has said.

- **Flynn:** I have a quick follow-up, Mr. Chairman. In that regard, the way to accomplish this, if there is a company, a hosting platform that thinks it's good business to collect and remit on behalf of its hosts, not only the state sales and use tax but also the local transient occupancy tax, the way to accomplish that is to come forward with a voluntary agreement. And in some certain situations, it needs to be facilitated by statute in the case of local taxes? Is that right?

    - **Haskins:** Yes.

- **Peace:** Yes ma'am.

- **Ragon:** Maggie Ragon. You mentioned the communications tax. That is a state tax not a local tax, correct?

- **Haskins:** It's a state tax where all the money is returned to the locality.

- **Ragon:** Is that assessed by a percentage through the Department? It's not assessed on actual receipts.

  - **Haskins:** It's a tax that's imposed. It's 5 percent on the charge for communication services. The amount of money is distributed on a formula based upon the amount of the old series of taxes pre-2007 that each locality had when they imposed the taxes that were replaced.

- **Ragon:** Okay. So that would be considered somewhat different than the local transient occupancy tax in terms of the Department's ability to collect it on the locality's behalf.

  - **Haskins:** Yes.

- **Rives:** Sterling Rives. Mr. Haskins, if I understand federal income tax law correctly—and that's a big *if*—if I were to rent my house out for 15 or more days in a year, the income I receive from renting it out must be reported and it's subject to federal income taxation. Is the same true of state taxation? Is that subject to Virginia income tax?

  - **Haskins:** If your rental income is subject to federal income tax, it's going to be subject to state income tax.

- **Rives:** Assuming that the homeowner is complying with federal and state tax law, that information is then reported to the Department of Taxation at that 15-day threshold.

  - **Haskins:** Whatever the threshold is at the federal level, yes. Virginia is a conformity state. Your starting point on your Virginia income tax return, it's the starting point of your federal adjusted gross income. Any taxable income or loss from your rental activities would flow through the federal and come to Virginia, and we would treat it the same way.

- **Rives:** In fact, they can take deductions for that portion.

  - **Haskins:** It goes on a Schedule E and all that.

- **Rives:** Wouldn't it make sense to have the definition of occasional sales or occasions be the same as the threshold for taxation? So instead of Delegate Peace's hypothetical with three one-month rentals or occasions, if it said 15 days and tie that to the income tax, then all of that information would be provided to the Department. Doesn't that make sense?

  - **Haskins:** It makes sense for certain perspectives. I think the three occasions is part of the Virginia sales tax law, not income tax. I think that's the difference. For the sales tax, if you're here more than 90 days, then there is no sales tax

charged. So I think we're really talking apples and oranges. There aren't many places where the sales tax and the income tax are tied together. It may make it more complicated, but they're each there for their own reasons. If the General Assembly wants to broaden the occasional sale rule to 15 days, that's their will.

- **Rives:** Or at least make the threshold the same. It's just a question, Thank you.

- **Peace:** Thank you, Mr. Rives. Senator Barker.

- **Barker:** My question follows up on what Mr. Rives was just asking. It seems to me we've had a lot of talk about sales and use taxes and transient occupancy taxes, but there's also significant implication for income taxes. If there were not to be registration and the taxes that were collected from the hosting platform were not tied specifically to the individuals renting it, I assume that one of the risks is that there would be no way of knowing necessarily who might be subject to income taxes as a result of operating a facility that participated in this type of platform and that the Commonwealth and obviously the federal government as well, but certainly from our perspective, the Commonwealth would risk losing out on monies that were owed to it because we did not know who potentially owed those taxes.

    - **Haskins:** That's correct, Senator. It would be another tool the IRS or the state could use to verify that people are actually reporting the proper amount of income.

- **Barker:** Thank you.

- **Peace:** Delegate Bulova.

- **Bulova:** Thank you. You had made an interesting statement that compared to where we are now where it's kind of a free for all with respect to who's paying and who isn't, very difficult to track. So you made the statement that with the legislation that was proposed or some iteration, we're probably at a better spot now from a taxation point than where we are currently. Notwithstanding all the other issues aside on the taxation front, maybe that is the case.

    - But I guess the luxury of the process that we're going through here now is that we do have some time to look at what is the legislation that we really want to do. So I know that there is still some consternation out there with respect to accountability. And when asked about how comfortable you felt with the legislation, there was a little hesitancy there. I got the sense that you had thought or could think through what actually would need to be in there that would make you feel very comfortable about the accountability process.

    - And so the question that I have is, have you thought through that or have you been asked to come up with a structure that would actually give you a sense that we were on solid footing with respect to the accountability standpoint?

        - **Haskins:** Delegate Bulova, I think from a tax perspective we really like to tie things together. As Senator Barker was saying, that way you could have the income tax tied into it. But we also realize it's a voluntary tax system in Virginia. We don't have but 700 and some employees, so we also realize the limitations. And sometimes you have to give some to get some. So nothing is ever perfect, I think, from a tax perspective on this. Certainly there could be improvements, and from our perspective, on the legislation that was introduced.

    - **Bulova:** Mr. Chairman, if I could follow up. I guess we're looking at where do we start from, because eventually somebody's going to have to propose a structure or a framework, and then we're going to negotiate around that. I for one would like to start with a structure that you felt comfortable with. So maybe I could encourage you to come up with a premise or draft legislation, at least on this front, that would set a platform from which to start from rather than necessarily relying on the bill that we had come through the General Assembly this last time.

        - **Haskins:** We would be glad to look at it. Anything we do is the tax side of this only. As we've heard this afternoon, there are many other issues.

- **Bulova:** That is completely understood. Thank you.

- **Peace:** Mark, not to get in the weeds, but maybe so much more than constitutional law, you may have mentioned, but you may not have talked about that software program that was proposed as part of that mechanism. Could you illuminate everyone here, because I don't think they were a part of all that discussion? I think that went a long way toward your comfort level in terms of collection and remittance.

    - **Haskins:** For the ones who weren't involved in the discussions last December, January, and February, part of our concern on this and the level of information we had is trying to make sure that the local tax goes to the right locality, the 1 percent tax. The Department spends an awful lot of time trying to make sure that people know Richmond County from Richmond City and that Richmond County doesn't get the local tax for Richmond City. Especially out-of-state companies really don't understand Virginia geography and who's where.

        - So we use software where if you register with Virginia, and give us your address, and you tell us you're Henrico County, we go through and refine that address using software to make sure that you really are Henrico County, that you're not in the City of Richmond, that you're not in Chesterfield. You may have a Richmond mailing address, but you could be in one of the other localities.

        - So over the years, we've worked with localities to refine that process. And we use sampling software to do that. What we had discussed during the course of the bill was getting a run from Airbnb of where their hosts were

and running that through very similar software. We could get a comfort level that it's accurate 98 percent or 95 percent so that when they registered and said there are 37 hosts in Hanover and 42 hosts in Virginia Beach that yes, those were accurate. So we had worked with them and felt comfortable that the software they were using was compatible with what we use for the same purpose, to make sure that the local 1 percent tax would go to the right locality.

- **Peace:** Thank you, Mark, for that. Does anyone have questions or comments over here? We have Ms. Hager and then Mayor Rordam with a half dozen questions.

- **Hager:** I'm so glad I get to go before you.

- **Peace:** Amy, go ahead.

- **Hager:** I like how you're talking about how you could see this working. So the only group I feel like we really haven't touched on is those who do list on Airbnb or whatever it may be that are already collecting the taxes. If Airbnb is now going to collect the taxes, what does that now small business owner's tax process look towards? Do they have to just say this money was collected by Airbnb and they don't have to send you the taxes? How does that work?

    - **Haskins:** Assuming that there was legislation or an agreement where Airbnb agreed to collect on behalf of their half, I'm assuming they would let their host know that they are doing that. And any host that's currently registered could unregister with the Department and give that responsibility to Airbnb.

- **Hager:** So they would still have their online reservation systems. They would still be on bedandbreakfast.com and offering their property through other channels. So those channels they would still have to submit the taxes to you. But would there be some line item or some form that they have to fill out that says they did $2,400 in business on Airbnb last year, so therefore Airbnb should have collected that, and that shouldn't be collected from them.

    - **Haskins:** Again, we didn't get that far in the details of implementation because the bill was quickly moving through the process last year. The bill did not say "Airbnb," it said "hosting platform." It said "may." So our thought was that if you use one of the hosting platforms that comes forward to register with the Department and take on the collection responsibility, that would relieve you as the host of that responsibility. If you were dealing with a host that didn't, then you would still need to maintain. And if you are dealing with multiple hosts and some do and some don't, then if you were ever audited by the Department, we would certainly want to see a breakdown like you mentioned that x-amount of mine went through a host that had taken on the responsibility, and this amount did not go through a host who took on the responsibility.

- **Hager:** Okay, thank you.

- **Peace:** Thank you.

- **Ron Rordam**, *Mayor of Blacksburg, Virginia Municipal League*: I'm going to speak quick. Thank you. In listening, we're really dealing with two questions. One is the state tax question, and that's if you're domiciled in the state, it's voluntary. But if you have a restaurant in the Town of Blacksburg or in Charlottesville or Staunton, that meals tax is not voluntary. You need to collect it. I want to take the name Airbnb out because they're trying to be good citizens and collect and bring it in. But that can change. You could have a whole other platform next year. How do we as localities end up collecting the taxes that we should, because each one of those rentals is domiciled without communities? That goes back to registration. How do we know? I think we're dealing with two separate issues here.

    - **Haskins:** I agree, and I think that was one of the issues that brought this legislation to this workgroup was how to deal with that issue from the local standpoint. I think we feel comfortable at the state level that in aggregate we would be collecting the right amount. The localities, we're less comfortable. That's why we're here.

- **Peace:** Mr. Mullen.

- **Edward Mullen**, *Reed Smith*: Mr. Chairman, could I offer just a thought on that. Short-term rentals, this is not a new phenomenon, of course. Obviously we're all very aware of it now because of these online platforms. But I presume that the concern you have has always been a concern, it's just that now you're really much more aware of it.

    - I would see this type of effort and the one that very candidly my client brought forward as sort of proposing a solution has a real opportunity for localities to solve a problem that heretofore has been a very difficult one to solve. And it's not just dealing with hosting platforms my client just started in 2008. I don't think short-term rentals started with them. It's solving a problem that needs to be solved.

- **Rordam:** Thank you, and I do agree with that. I've thought a lot about this. My wife's aunt and uncle have a place in Ashland that they rent every now and then to students. They did that maybe once every three or four years. I think what we're dealing with now from a local standpoint is with the technology and the ability of the platforms, it's a much larger issue than it was 10 years ago. It's not picking on any one idea. Before, it was just kind of out there, now it is prevalent, and we're finding it being a large part of our communities.

- **Peace:** The point is well taken. Mr. Dicks.

- **Chip Dicks**, *Virginia Association of Realtors*: Mr. Chairman, I'd just like to say I've heard the building registration or property registration idea a number of different times. I've represented the Virginia Association of Realtors for over 25 years, and

we've been opposed to property registration all of that time, as our local government friends know, and I don't think our position on that is going to change. We just need to look at other solutions that divide massive property registration for one kind of short-term rental versus certainly as you said other kinds of rentals and whatnot. I think that's a concept that there would be a lot of problems with. I just wanted to mention that since I heard registration for about the tenth time.

- **Peace:** Thank you, Mr. Dicks. This will be in the minutes of the meeting as well for anyone to read and review. Are there any further questions or comments of Mr. Haskins? We appreciate your public service for the Commonwealth.
    - **Haskins:** Thank you, sir.
- **Peace:** Thank you.

V. Property Owner Association / Property Manager Concerns

- **Peace:** We have one significant, substantive area to cover before we depart, property owner association / property manager concerns. I know that there are also a number of people who are here who are very interested in quality of life in their communities, quiet enjoyment, and other issues regarding their neighborhoods. I know the local governments have raised that consistently. I think we all care and are concerned about those issues.
    - So we're very grateful to Pia Trigiani, who is a former president of the State Bar and famed attorney in Northern Virginia who will educate us about these very important subjects having been a part of writing much of the code in these areas. We're very grateful for you to be here.
- **Pia Trigiani**, *Virginia Association of Community Managers*: That's a nice introduction, Mr. Chair. Well I thank you, and thank you for inviting our participation. We're delighted to be here. We will have a little constitutional law for you. I will not talk tax. Mr. Haskins, I hate taxes.
    - Our presentation is designed to give you an introduction to community associations, common interest community associations. Other of the Housing Commission are very familiar with it. In fact, the Housing Commission is the source of much of the legislation affecting community associations. So a general discussion of the framework of these associations and also some information about the breadth and scope of their presence in Virginia, which is considered to some extent not only the mother of presidents, but the mother of community associations. I know that's hard to believe, but it's true. And also I'll discuss a little bit about what we have heard from community members about the issue of rentals, rentals overall—short-term, long-term—are an issue in community associations. So it's both with respect to long-term rentals, as Chip knows, and short-term rentals.

- When we talk about a community association, we talk about basically three or four different types of community associations. There are planned communities, which are also known as property owners' associations or homeowners associations. You can also hear them called proprietary or conservancy. In Reston, the small ones are called clusters.

- And we have condominiums. Virginia is the first state to have adopted a second-generation statute in 1974. It was a recommendation of the Housing Commission at that time. It was preceded by a horizontal property act, which was enacted in 1972.

- We have cooperatives, which there aren't many in Virginia. I would say in 1982 when the statute was adopted, it had a chilling effect on the adoption and creation of cooperatives. That's more of a New York thing. And time-shares are also considered community associations, but I'm going to focus on planned communities and condominiums.

- Here are some of the characteristics of a typical community association. Automatic members is one. When you buy a property that's in a community association, you're a member of that association automatically and by mandate. The documents for a community association—and I'm going to talk a little bit about those—create a contractual relationship, a covenant, a contract. And then you have individual property ownership and ownership of common areas or common elements, which we'll talk about in a minute. And there is also mandatory assessment.

- These are some of the distinctions. In a planned community—and this is the big one—it's about the common area, who owns it. In a planned community, it's the association, which is typically a nonstock corporation, although they can be LLCs. I think some of the more modern ones are looking at that form. But it is owned by that association. Virginia has one of the largest in the country—Reston. Reston is not a town; Reston is a homeowners association. There are 10,000-plus homes and commercial uses.

- By the way, they don't have to be residential. They can be mixed-use and they can be all commercial. An example of that is where the Redskins practice every week when they're not here in Richmond. That is a property owners' association.

- With condominiums, the owners own the common elements. They own fee-simple title—sorry to go all legal on you—to their unit, however that's defined. And it can be defined lots of different ways. And then they have an undivided interest in the common elements. That means it can't be separated. It's undivided. And it's based on however the developer decided to do that. Sometimes it's square footage; sometimes it's pro-rata share; sometimes it's fractional. It just depends.

- And then you have your cooperatives, and I only share that because it's interesting. In a cooperative, the association owns everything—units, apartments, and the common areas. It's a corporation. There are some interesting tax issues there, Mr. Haskins.

- There are three functions of a community association. They're a business. The legislature has also considered them a government. We prefer to consider them businesses. They're private entities; they're not public. When I speak to some of the other characteristics later on, you'll understand why we don't want to be considered a government. But there are governance aspects to a community association.

- I was at a meeting last night until midnight with a board in Leesburg. They were governing. They were grappling with an issue about whether to expand their common facilities. It sounds a lot like what we hear in the room today, same kinds of policy questions and issues of revenue and such.

- The third thing and the thing I'd like to emphasize—and I think we've heard it already today—is they create community. Developers create legacies with the communities that they develop. It's all about what's in a given neighborhood. Create a neighborhood. That's what these communities are designed to do is to create community and shared business, shared use.

- Here are some statistics. This slide and in the materials that we gave you, there is a more extensive summary produced by Community Associations Institute, which is a 35-, 40-year-old organization that is an education collaboration among community associations across the country. They've been studying this issue for a long time.

- You'll see in 1970 that .7 million housing units across the country were in a community association. If you go down to 2015, it's 26.2 million and 68 million residents in a community association across the country.

- That's significant. It's significant because most new housing starts in the United States of America are in a community association of one form or another. Why? Community associations take burdens off of localities, serious burdens such as infrastructure maintenance, and services to homeowners. I grew up in Big Stone Gap, as you've already heard. We had a town pool. Big Stone Gap doesn't need a town pool anymore if they create a homeowners association because the homeowners association has the pool. That's what happens.

- If it's gated, some of them are, the roads are maintained by the association. It takes serious burdens not only off our local government but our state government. At the same time, it adds to the tax base and the tax value. I live in Old Town Alexandria. I moved five blocks. In my home before, the city picked up my trash. I moved five blocks. It looks almost like it's a little newer. The trash, I pay an extra fee to my association, which picks up the trash. So those

kinds of services, it's important to know what value community associations bring.

- By the numbers, again, in the United States CAI estimates between 342,000 to 344,000 in Virginia. And I think these numbers are low. Eighty-five hundred community associations, at one point, 710 million residents live in a community association. I mentioned since 1970, one in every three new residential homes built in the United States is in a community association. I think it's closer to all.

- They range in size from two-unit condominiums to large-scale planned communities. Delegate Knight, in your district, there are probably hundreds of two-unit condos. Back in the 1980s, Tom Ammons, who served on the bench, created a host of these two-unit condos where it was an existing building and they divided them into two. Again, Virginia has one of the largest, one of the three largest in the country with Reston. But Lake Ridge is another with 7,600 homes. Broadlands in Loudon County, that full build-out will be at 8,000 homes. So they range in all sizes. We also see 100 units, 300 units, but they're all different. The largest condominium is in Alexandria, and it's called Park Fairfax. It's over 1,600 units and the largest conversion on the East Coast.

- Community associations have all kinds of architectural styles—townhome, garden style, single-family homes. There are some condominiums that are even land condominiums. I think there's one down in your district, too, Delegate Knight. The beauty of the laws that we've adopted in Virginia is that it gives the developer great flexibility to develop land into a workable project.

- This is some important information about who lives in these community associations. They're not all whacky, but some of them are. Some of them are probably in the room too. I see over there and I know you live in a condo.

- The Research Foundation of Community Associations has done a number of studies. They started out with a poll by Gallup, but have followed it up every five years or so with polls by Zogby. They've done about five of them or six of them. They use the same questions in every poll because they're trying to gauge satisfaction of homeowners who live in these community associations. The most recent one I believe was 2015. What they found was by large majorities most residents rate their overall community association as positive.

- What they say is that the association board members serve the best interests of their communities and their managers provide valuable support to that. And then there's this point: Residents support the rules because the rules protect and enhance property values. That's the connection to the conversation today.

- Some of the statutes that apply are in the federal law. The Americans with Disabilities Act is one. I will talk a little bit more about that because that's one of the challenges presented by short-term rentals to community associations. The Fair Housing laws, both state and federal. The Federal Flag Act. We've probably

seen some of those battles. And then the Telecommunications Act of 1996. Of course common law applies, not so much to the Condominium Act, because condominiums are statutory fiction, purely created by the statute. And then there is local ordinance. That's the other connection or nexus today is that local ordinance.

- The state statutes include the Horizontal Property Act, the Condominium Act, the Property Owners' Association Act, the Real Estate Cooperative Act, the Time-share Act, and then the Nonstock Corporation Act. And in 2008, the General Assembly adopted regulation of community associations primarily focused on associations and community managers. Those statutes address that regulation to some extent.

- What we've learned more and more is that the focus and attention has to be on these documents. The documents are the root source, if you will, of the authority of these community associations and limit what these associations can do. They are critical. Some are good and some are really, really bad. That's what makes this interesting. And I will say that over time we've learned a lot about what good documents should say.

- And because this is a relatively new form of ownership, we're really talking the 70s—I think it's relatively new because of my age; some of you may not agree with that. Those courts haven't really dealt with a lot of issues dealing with associations. They're growing though, and what we're seeing the trend of the cases is that the courts are very narrowly construing authority of associations and the restrictive covenants established in these documents.

- In a condominium, the documents you have are called the *condominium instruments*. It's always a declaration or in a horizontal property regime it's called a *master deed*. And then there are some exhibits called bylaws, a common element interest table, plats, and plans. These are recorded. The condominium instruments are recorded. Why is that important? Real estate nerds like me will tell you it's in the chain of title. That's where the contract is created.

- Associations then adopt rules and regulations and resolutions of the board, which are really more policy or administrative. Those resolutions and rules and regulations have to be founded on authority in those recorded documents, the condominium instruments.

- In a property owners association, a planned community, you have a declaration. Sometimes you see it called a deed, declaration of covenants, conditions, and restrictions. CC&Rs you hear it called. That declaration again creates the contract. The contract, by the way, is from the association to the owners, the owners to the association, and the owners to each other. That's important.

- They are nonstock corporations typically, so they have articles of incorporation and bylaws. Bylaws in the hierarchy in an HOA planned community are the least

important. In a condo, they're the most important. So a little reversed. HOAs typically have architectural guidelines. The talisman, if you will, of a community association is you can't build that there, you can't have it there; we don't want that fence, no fence. And there are rules and regulations and resolutions.

- Here is where we go to the Constitution, Mark, I'm so excited. Our Bill of Rights actually is unique to some extent in limiting the authority of our General Assembly to affect existing contracts. What our Bill of Rights says is right up there, that the General Assembly shall not pass any law impairing the obligation of contracts.

- When we look at legislation in working with Commission members and with legislators on legislation, we go back to the documents. When we're looking at a piece of legislation, we say you're stepping over this part of the Bill of Rights. You can abrogate a contract. We do that with fair housing law. The difference is there's a federal law. Federal law can come in and preempt. State law, based on this, cannot. Our Virginia Fair Housing Law is substantially equivalent to the federal law. You can go there. But this is an important concept, and has been, and it's been why Virginia law in this area has been very reasonable and well-reasoned in its adoption.

- When the bill was introduced, we went to the patrons and we said we need to recognize that constitutional protection. This is the language that was added to the bill which basically says just that, that any contract is preserved. This legislation does not in any way intend to jump over, abrogate, eliminate, change, or modify a contract or the recorded documents of a condominium or a homeowners association or planned community cluster or whatever you would like to call it. That's important, and we appreciate very much that recognition and that continuing recognition of the legislature on that important point.

- One of the things that these recorded documents contain are leasing restrictions—or not. Leasing restrictions have become a hot topic for lots of reasons, not just because of short-term rentals. There have been issues with long-term rentals as well and have been for quite some time in developing.

- The leasing restrictions have to be established in the documents, the recorded documents. For a condominium, it's going to either be the declaration or the bylaws. More often it's the bylaws. In the planned community, it's in the declaration. Why? A limitation on an owner's right to use their property, convey their property—a lease is a conveyance—has to be established in the title, these documents in the title. Those leasing restrictions are in the recorded documents. Not always, but a lot of times. They vary substantially. Documents are all over the place. Where there is a question or concern is the reliance on local ordinance. To some extent, but not a whole lot, leasing restrictions can be enhanced by rule, but it has to be based on the authority in the recorded document. It can't go beyond. For example, if the recorded documents say that you can have a minimum lease of six months—and that's a typical restriction, by the way—you

can't then say it'll be three months, by rule. You're stuck—I hate to say stuck, but you're bound by what's in the recorded documents.

- In the materials that we provided, example 1 under the condominium and the planned community are what I would call comprehensive restrictions. Typically, the restriction in a condominium context comes out of secondary mortgage market lending requirements. In most condominiums, you will see more often leasing restrictions, less over in a planned community. I went and looked at this.

- We keep our client binders, and I pulled them off the shelves and went looking. Almost all have a six-month minimum lease term. Why, because Fannie Mae, Freddie Mac, FHA, VHDA, all made a qualitative decision that we're not lending, guaranteeing loans, certifying loans in communities where there's a transient population. Why? Not proven, but the theory is that homeownership creates more value than short-term, mid-term, long-term rental. With rentals, you have people going in and out. It's changing. That lack of community is created and there is a concern about that.

- All of the federal lending agencies have always had that requirement. And the condominium development has been much more regulated and controlled, so in a condominium you will see documents, and in a document you will see leasing restrictions. The Horizontal Property Act regime, I pulled one for a community here in Richmond. They don't have it. So it's in the documents.

- In a homeowners association, a planned community, you often do see leasing restrictions, too. But FHA really only deals with condominiums, and the other secondary mortgage market ones are pretty much out of the market. But what you will see are some that do. A property owners association regulates short-term and long-term leasing put in a minimum lease term.

- What you do see in planned community documents more often is you can't have multiple tenants at the same time. So it would kind of cure your problem, Mr. Mayor. You can't have a frat house or multiple tenants, unless they're roommates. There is some language that goes back and forth. Most documents in a property owners association rely on residential use and rely on local ordinance to define what the residential use means. That's where we find it in most cases.

- What you have in that second handout that we provided are some samples of what we see in community associations. It's not complete and comprehensive, but it's close.

- I want to say to Jillian, where we have been successful on a national level, I'm told, is that when we've had issues in a community association, we have a good rapport with Airbnb and go to you and explain the problem. We find that the listing is removed. There is some cone activity which is positive and good in that respect.

- In a community association, the challenge for communities is the sense of community. Again, the neighborhood thing that we've talked about before. The second one is harder—purchaser and homeowner expectations. When someone buys in a neighborhood, they oftentimes don't expect that next door something different is going to be happening than what they will see in their home. By the way, this extends to next week's workgroup having to do with the conduct of businesses and home businesses. Some homeowners are concerned that really this short-term rental is the conduct of a business. So how does that interplay with the residential character and nature of community, which is the third point.

- These associations often rely upon local ordinance and zoning. And in fact, these associations are a creature of local government. They're created to take burdens off of the local governments with respect to infrastructure and those kinds of things, but also to regulate conduct and appearance. In many respects, the architectural restrictions and the conduct rules are nothing more than local zoning. I hate to say that because we're not governments. We don't have immunity. There's lots of liability for these community associations. But there is that concern about the ability to rely upon local ordinance and zoning.

- The other thing I think was mentioned earlier about full time versus periodic hosting. Some communities have experienced event houses or where the owner is never there. I think the legislation addresses that in some measure, but that's a concern for community associations. There is also a sense that if you're doing short-term rentals, the long-term rentals go away. And we like long-term rentals. The short ones in a community association raise some of these questions we've talked about.

- Some other challenges are compliance with restrictive covenants and association rules. We worked over the last couple of sessions with the realtors to address rules and making sure that tenants are made aware of rules. Arguably this would apply on a short-term rental situation, too. Making sure that when a person comes into a community association they know what the rules are.

- Some of the real-world issues are the leasing restrictions again, commercial issues, and behavioral issues. Parking is big, and then there's noise and trash. Smoking is becoming a big issue in these communities. And then the other ones are community standards, architectural standards, and maintenance, so on and so forth.

- The concern is that there's financial impact on administration. Maintenance and repair costs go up because you're dealing with people who aren't owners, who aren't invested in the community, who may not be as concerned that when they walk down the hall they take a nick out of a wall or they don't take care of the front yard. And believe me, front yards are big. At the meeting I attended last night, they had cited somebody for some weeding, and the guy just put some mulch over it and the weeds were coming up through the mulch. This one guy

was ready to go out and strangle him. That's what we get, Mrs. Kravitz every day. The people that watch *Bewitched* know who Mrs. Kravitz was.

- Owner conflict is a big issue. The expectation that you're going to live in a single-family community and it turns into something that's less than that. And then there's the security issue, which I think has already been discussed. There are questions of security.

- Some other issues are impact on property values, the added burden on common facilities, the owner versus short-term tenant perspective; we've already talked about that. This next one could be big, the Americans with Disabilities Act. Residential communities are not considered places of public accommodation under this federal statute. Sometimes they are, they become places of public accommodation if there are commercial properties, a doctor's office, a lawyer's office, a psychiatrist's office, something like that in the community. Or the community makes the common areas available to the public, like a river walk or a plaza or the pool, swim teams, when you bring in non-members. So there's a huge concern that when you have non-owners and there's a constant access by someone who's not an owner that it may trigger the Americans with Disabilities Act. Why is that significant? It's significant because it would require the association in some instances to make major modifications to common areas to accommodate someone with a disability. So it could be big.

- And then you have the Fair Housing Law. There is a lot of concern about fair housing in community associations. Community associations are considered housing providers, and they must comply with fair housing. So when you introduce non-owners and it applies to anyone who would be accommodated or live, the association has to make sure that there is compliance with fair housing laws.

- The mortgage finance issue is a big one. We don't want you to be too restrictive on rental, but we want you to be restrictive on rental. And this is a big challenge for community associations and some of the lending agencies don't like rentals at all.

- Some solutions or some approaches to addressing the challenges that we've talked about are more rigorous compliance. That's pretty self-serving, but we have to enforce the rules. And if there are rules, we enforce them more rigorously. The next one is amend the governing documents. The association, the owners can choose to amend their governing documents. There are some challenges to that. Amendment thresholds are typically high and it's costly. There was a recent Virginia Supreme Court case on leasing restrictions, oddly enough. An owner challenged leasing restrictions because they bought the place knowing that they wanted to lease it. The association had adopted an amendment to the leasing restrictions. The process and procedure of amending has been called into question by the recent Supreme Court case, which we think can be cured legislatively.

- That's all I have. I'm glad to answer any questions or just sit down and be quiet. I'm glad to note that Senator Stanley has left the building.

- **Peace:** He looked like Elvis when he left. I guess I wanted to say something. We can take other questions and comments now or wait until Brian presents. I'm not sure what the workgroup's pleasure is.

  - You mentioned a couple of terms—retaining the character of community, preserving community standards. In 2016, that has a different connotation than it did in 1950. It's true that Virginia does not have a very proud history where certain more difficult things were put into deeds or put into covenants stating that black people couldn't own in certain neighborhoods. Maybe this is a Pia question and not a representative question. In light of preserving community standards and retaining community character, how much have you been able to discern is a concern about something different coming into the house next to me and not something that I'm used to where I've chosen to buy in a certain neighborhood knowing that fair housing realtor standards prohibit such things. I hope that we as Virginians would not endorse a system of laws or rules or otherwise allow that type of discrimination to continue.

    - **Trigiani:** Point well taken. Those restrictive covenants which were in many deeds in the mid-50s, -60s, probably up until the 70s, are void as against public policy. First of all, they don't exist as far as I'm concerned. One of the things that the legislature did in enacting the regulatory scheme affecting community associations was to require fair housing training for managers of community associations, just like realtors, both leasing and sales, brokers and agents, have to have fair housing training every two years.

    - We have seen an uptick in fair housing complaints, but they are not typically race related. They're more handicap related. The nature of them is typically having to do with parking, one of which went to the Virginia Supreme Court last year. The association was found not to have violated. There was a misunderstanding about who owns common elements and that kind of thing. The association was not penalized in that case. There are things like pesticide application. If chemicals are being used, chemical sensitivity. So that's where we've seen some uptick.

    - I'm pleased to say that of the cases that I've seen on fair housing in my own practice, they're de minimis on the race front, so that's good.

    - I think you are absolutely correct that this is a different day. It's a different kind of world we live in. I would say that I think there are many who support this kind of use. It's when it is abused, just like anything else, it's overdone, and it changes the nature of the community. I haven't heard a community that's upset when it's a one-off, an occasional, a periodic. It's when it's turned into a business that there's a concern. And then there are

those occasions when you just get a bad actor, and you get them. There are bad actors everywhere.

- I do think this, though, that the expectations of someone who buys in a covenant-restricted community is different. As the numbers show from the studies that have been done and the polling that's been done by CAI, there is very much an interest in rules. And it's because the association becomes the sword and the shield against their neighbor.

- I have personal experience. My next-door neighbor went to the association. I think I had some peeling paint on the fourth story of a tall townhouse. I couldn't see it. The guy is very particular. I got called by my own client to the board of directors to fix something. And you know what, I bought that. I bought into it, and I bought into that level of scrutiny, and I have to deal with it. But that's my expectation.

- **Peace:** I appreciate your comment. I've certainly experienced in my own community concerns that Syrian refugees are going to now come and stay. My point is as we move forward to try to forge consensus and find a bill that would work for all Virginians, that we're not operating based on fear that a community's character will change when someone uses Airbnb and they look different, because that's not acceptable. Mr. Mullen?

  - **Trigiani:** We agree wholeheartedly.

- **Mullen:** Thank you, Mr. Chairman. Thank you, Pia, very much for your presentation. We were very pleased to work with you during session. As you know and as Mr. Peace knows, I didn't think that the bill as it was introduced touched on contracts, but we were very pleased to add the language that you suggested making clear that we weren't.

  - You talked about a couple of the concerns that could come up if the documents didn't contain certain restrictions. But would you agree the bill as it came out of the Senate or as it ended up and as it's before this body protects both the contracts and generally applicable laws like nuisance and stuff like that? In other words, it doesn't trump those, so a nuisance complaint, a generally applicable ordinance like a nuisance or something like that, in addition to governing documents of homeowners associations and other such things.

    - **Trigiani:** I don't read it that way. I don't think it affects a contract where there's a nuisance provision in the documents. If the documents are silent, I don't know the answer to that.

- **Mullen:** Okay.

  - **Trigiani:** I haven't studied what it does to local—

- **Mullen:** That's a different section, so that's fair enough.

- **Peace:** Delegate Bulova and then Senator Barker.

- **Bulova:** I think this might be following up from what Edward was talking about. So really kind of getting down to it, do you feel that the language that was included in the bill from this last session is adequate to do what you want it to do or are there still tweaks that need to be made to it to address issues that might have come up between that point and now?

    - **Trigiani:** We agree with the language and like the language as it affects those communities that have restrictive covenants that deal with leasing. It doesn't impact or affect or help those that don't and that rely upon local ordinance. We have heard since the bill that there's a question.

- **Bulova:** So I have a quick follow-up on that. I think you went over a whole range of different ways that declarations may or may not address leasing situations. By the way, I actually looked up the new best practices guidance, and it actually does have a point in there that says you should address leasing. So that's really good looking forward.

    - If you had to kind of give a professional best guess, how many declarations are really solid with respect to yes, you have carte blanche dealing with leasing versus ones that have a gray area where you might actually have a problem versus that are just completely silent on it, which throws them into any other home or civic association like the one that I belong to.

    - The issues that we're dealing with I think are universal. Quite frankly, I think we need to address them regardless of whether you are in an HOA or not. So break it down for me as far as HOAs are concerned, who's got problems and who's covered.

        - **Trigiani:** I would say that for more condominiums, for the most it's addressed in the documents. I'd say for property owners associations, planned communities, for the most part it is not.

- **Bulova:** It is not. Okay, thank you.

    - **Trigiani:** And the civic associations it definitely is not.

- **Barker:** Thank you, Mr. Chairman. Pia, I have a quick question. You talked about the FHA and other mortgage entities limiting and saying we're not going to provide mortgage assistance in communities that have short-term leasing. Obviously, there are communities throughout the country who have that now, and it doesn't seem to be going away. How do you see that conflict being resolved, and is it something that we should look at in any legislation we deal with?

    - **Trigiani:** I have two points. The only secondary mortgage market lending agency that's really in play now is FHA. They certify or address loans in

condominiums only. So that's why I think you see the restrictions in condominium documents more often.

- In property owners associations, what you have is lenders modeling their underwriting guidelines after the secondary mortgage market lending agencies. There's no requirement that they follow them, but they model them. Every community association manager gets a mortgagee questionnaire for every property. They're asked questions. And one of the questions is, are there leasing restrictions. I don't know if that means that they won't lend in that community, but what we do see is that the conventional loans, even the non-conventional loans, are modeling them after the secondary mortgage market lending agency requirements. They used to exist, don't exist, kinda sorta still exist.

- **Barker:** The latter part of the question was basically do you think this is an issue we need to look at when drafting legislation or not?
  - **Trigiani:** Do I think that the legislation should address what is a residential use versus a short-term or home occupation? I think it could have an impact, yes.

- **Dicks:** I have just one question, Pia. You and I have had this discussion before.
  - **Trigiani:** You mean argument.

- **Dicks:** Argument, that's right. We only argue, right? If the governing documents do not have leasing restrictions, would you comment on how the governing documents can be changed or to what extent they can be changed?
  - **Trigiani:** The Condominium Act is very clear and very easy. Since 1974, it is a written ratification and consent by owners of units to which 66 and two-thirds percent of the common element interest appertain. So 66 and two-thirds, basically, of ownership interest. A written document, not a vote.
  - For property owners associations, it's like the stars in the sky; there are lots of different ways to do it. That recent Supreme Court case calls into question what it is, which is why we need some legislation to address it. But basically, it can be by a vote, it can be by a written document, or it can be completely silent. The Property Owners' Association Act addresses the completely silent and allows a process. But that's where the court case has kind of muddied the waters, so that needs to be clarified.
  - But it's not easy to amend the documents. It's almost always a super majority, 66 and two-thirds. Sometimes it's 80; sometimes it's 75. It just depends on what the developer and the developer's lawyer who was drafting the documents did.
  - In more modern documents it's a lower threshold, and it's by a vote. Older documents, it's all over the place. We've learned how to draft these documents a little bit better.

- **Peace:** Mr. Dicks.

- **Dicks:** The Chairman has had legislation the last two years that you and I had worked on that deal with rentals, so the philosophy of an owner of a property being able to rent their property and the association is not a party to the landlord/tenant relationship. Would you agree that the legislation that the Chairman carried the last two years would cover any kind of leasing relationship between the owner and the tenant?

    - **Trigiani:** I think it would have to. I would agree with you. And that legislation would require the landlord to provide a copy of the rules to the tenant. The tenant would have to acknowledge those rules. The landlord would have to provide to the association the name of the occupants, and their vehicle information, and the name of their authorized agent. Did I miss anything?

- **Dicks:** No, I think you got it down. My point is that short-term rentals would be treated just like long-term rentals where the association does not have an anti-leasing provision or a restricted leasing provision in their governing documents.

- **Peace:** So you're saying that's supplementary to the language that was in the bill that Pia spoke to where there are covenants against such activity or prohibitions. When silent, that springs.

- **Dicks:** Right. As you know, the purpose of your legislation in that respect was to basically say that in the absence of a provision in the governing document restricting a landlord/tenant relationship from the owner being able to rent to a tenant, that that was between the owner and the tenant, and the association did not have a veto right, and they couldn't have a meeting of the board or whatever and just say we're going to prohibit leasing. So respecting the constitutional provision, it does allow and respect the private property rights of the owner to rent. And it would cover long-term rentals or short-term rentals.

- **Peace:** Thank you, Mr. Dicks.

    - **Trigiani:** Mr. Chairman, one other thought occurred to me as Chip was asking the question that really is an issue for Mr. Bradshaw to address when he addresses the insurance coverage. In a community association, there are different insurance requirements, and it occurs more in a condominium with the master policies of insurance and general liability coverage. But it also would apply in a homeowners association. I think that should be addressed when the insurance issue is considered. It's a little bit of a different issue, but it's related to the insurance question.

- **Peace:** We'll make note of that and make sure that that's developed further. At this point, I'm going to digress from the agenda briefly. We had had several legislative inquiries of the Commission and the workgroup for opportunities for comment. Delegate Krizek is here with some individuals who would like to address the workgroup. They've been waiting very patiently. However, we have a more senior

member of the assembly here who would like to also address the group, Senator Norment. I've been passed a note. I don't know if he's still here. We would like to hear from him. He's asked for an opportunity to speak, so we want to give that to him. I know he has to leave. Then we'll get back on schedule, and then Delegate Krizek if it's okay with you. I appreciate that. Is he here? Okay. I know he had to leave at four, but it's not quite four yet, so I was hoping we could get him. Okay, Brian.

- **Brian Gordon**, *Apartment & Office Building Association of Metro Washington*: Good afternoon Mr. Chairman, members of the workgroup. My name is Brian Gordon. I'm here today representing the Virginia Apartment and Management Association and the Apartment & Office Building Association of Metropolitan Washington. Our member companies own and manage multi-family rental housing comprising a collective portfolio of roughly 207,000 apartment units throughout Virginia. We very much thank you for your time this afternoon to present to you the interests of our industry in this issue. I benefit to a degree from my position on the agenda behind Pia, as I'm able to say ditto to a lot of what she said. We have a very similar perspective on the world, so I will try not to cover similar ground and try to keep my comments today mercifully brief, if I can.

    - To boil it down, our industry's interests in this issue are twofold. First and foremost, we as property owners want to maintain, protect, and preserve the authority of property owners to regulate subleasing activity through the lease agreement document. And to reference back to Pia's slide with regard to the constitutional protection of contracts here in Virginia, I don't believe that's actually a change that has been part of the discussions on legislation here in Virginia. But there are several jurisdictions across the country that have adopted provisions that either restrict or outright prohibit the ability of property owners to prevent subleasing by their tenants for their units.

    - We have a vested interest in, firstly, knowing who is in our buildings and on our properties. But beyond that and not dissimilar to the interests and concerns that were presented last month by the local governments, we have an interest in being able to protect the safety and the surrounding community and our other tenants. We want to be able to protect them from potential nuisance violations and things of that sort on our property. That is very much an interest of our industry to maintain that existing authority.

    - Secondly, we do have some members who have expressed interest in utilizing platforms such as Airbnb to engage in short-term residential leases on a very limited basis to bring in revenue on an otherwise non-performing asset. So where we have a vacant unit, nobody's in there, and we're not getting in any return on that investment, our members would like the ability to, again, on a very limited basis use short-term residential lodging to help provide that return on investment.

    - We do understand some of the concerns that were presented by the hospitality industry at our last meeting with regard to properties operating as legal hotels. We're certainly understanding of that, and I'm aware that there may be some bad

actors out there that are engaging in that type of business model. But from our members' perspective, that's certainly not the intent. And my understanding of the financing structure for larger apartment communities, our investors aren't prepared to accept that type of a liquidity in our business model. We're not looking to completely reinvent our business model and clear out longer-term rental properties to operate them completely as Airbnb properties.

- In some of my off-line conversations with different stakeholder groups, I do believe that there's a path forward and there's a way to put restrictions in place that would help prevent that sort of circumstance from arising. And certainly as this workgroup proceeds through the summer with its work, I think we'll be able to come to some sort of an agreement on what that might look like. Just as an example, I think it makes a lot of sense that if you are operating as an apartment community, a rental property, that all units would have to remain available under the terms of the Virginia Residential Landlord and Tenant Act, which is a minimum month-to-month lease. I think that would go a long way towards eliminating that illegal hotel business model. But certainly there are other things that I think can be discussed.

- Some of the solutions I think to the issues that we've all discussed may already be in place within different areas of the Code, and there are certainly different places that we can look. The Virginia Housing Commission in the last couple of years has looked at regulations on extended-stay motels that I think might provide a good guide for where we need to go as a workgroup as well. There are also existing regulations in terms of licensure and who may rank property. So I think those are some things that we can look to going forward.

- That is essentially the interest of our industry. Perhaps I'm a bit of an optimist, but I do believe that there's a way within this process. I'm a big believer in the Virginia Housing Commission, having worked with this group over the last several years on a number of different issues. And I've seen very difficult issues where all of the stakeholders have come together to be able to put something forward that at the end of the day resolves everybody's concerns. That's what we look forward to doing this year.

- **Peace:** Thank you, Brian, especially for those last comments. Are there questions of Mr. Gordon or comments from the workgroup on his presentation? Does everyone understand what an illegal hotel is in the pejorative sense? We all kind of know what we're talking about? Mr. Rives.

- **Rives:** Thank you, Mr. Chairman. I would appreciate it if you could explain again your idea for avoiding illegal hotels by requiring that the apartments remain available for leasing on a month-to-month basis.

  - **Gordon:** This is nothing that we've fleshed out or actually drawn up any legal language on. But I think conceptually the idea would be that if you operate an apartment building, which calls under the Virginia Residential Landlord and

Tenant Act, that if you were to engage in short-term lodging that those units would have to simultaneously remain available to be rented under the terms of the Virginia Residential Landlord and Tenant Act, which is a minimum month-to-month lease. That would be to say if you have prospective renter who wants to come in for a longer term lease that that unit would not be sort of reserved for short-term lodging.

- **Rives:** I think I understand the concept. Would you need to have some requirement that the units continue to be advertised as available? Would you have to have some restrictions on what the rent would be? Not that any of your members would do this, but it's conceivable that they would no longer advertise the units and they'd set the rent so high that they wouldn't get the month-to-month lease and they could continue to put them out for short-term rentals.
    - **Gordon:** I don't think that the concept of setting what the rent may be is something that we had contemplated, but I think that's certainly up for discussion.
- **Rives:** Thank you.
- **Peace:** Yes, Mr. Dicks.
- **Dicks:** In answer to Mr. Rives question. Today, if I'm an apartment owner and want to lease an apartment, I can lease a corporate apartment, and somebody can come and stay for two weeks, three weeks, whatever. But as the hotel/motel people know around the table that I have to pay hotel/motel tax because I'm renting for less than 30 days. So there's a provision already in law that addresses that situation. We'd have to flesh out, as Brian's saying, that language and see if that language really works. But I think there's a willingness to take a look at that.
- **Peace:** Thank you. Any others? Hearing none, thank you Mr. Gordon. I appreciate you being here. Thank you for participating in the workgroup as well.

VI. Legislative Comment

- **Peace:** Next on our agenda is Legislative Comment. Delegate Krizek had asked to be here, and I had asked staff to include a letter that you had forwarded me in your packet. We have it on the table for anybody who wants to have it. Paul, thank you for being here. I appreciate your patience. And also thank you for bringing one of your constituents, I believe, all the way here to Richmond.
- **Delegate Paul Krizek:** Thank you, Mr. Chairman, members of the working group. My name is Paul Krizek. I'm the delegate from the 44th, and that's the Mount Vernon and Lee portions of Fairfax County. You probably all know this is my first year, and so this is still a learning environment for me. And I do appreciate this.

- This is the first time I'm been down here during the off season. I want to thank you also for giving us some time. I have my constituent, as you mentioned, Mike Rioux, who's the Civic Association President of Mason Hills Association. And former Senator Toddy Puller, that's where she lives. It's just down the street from my neighborhood, which is the Holland Hills Civic Association. There are a number of people also who've come down from Mason Hill today and also from other civic associations around the Commonwealth, and I want to thank them all for coming out. We're here to represent you, and hopefully Mike and I will be able to catch some of the most important talking points that you have here. And I think it's important that we hear it.

- From Pia, we learned about the HOA. We kind of got HOA 101. Actually, it was more of an advanced class. I think that was 202, yes. But what we don't have is we really haven't heard from those civic associations that don't have those powers. And so I think that's what's really important that Mike's here. I'm thankful that the Chairman's given me a chance to let him talk and give you some real life experience of how short-term rentals, and Airbnb in this case, can have a negative impact, unfortunately, on the fabric of community here in the Commonwealth.

- I'm not adverse or against folks being able to rent out rooms in their homes; I think that's important. I think people should be able to do what they want with their property within certain circumstances. And I do think it's important for people to have that extra income, that opportunity to make some income. I thought that the point of Airbnb from the very beginning was that opportunity to use those rooms that aren't being used.

- In fact, my family, my wife and my daughter, we have my parents' old place, and we have a couple of extra rooms. We're going to bring our parents back, and they're living in a condominium right now. We're going to bring them back, but we're going to create our own little condominium rules before they move back in with us. We're looking forward to having them back in the house. We're going to have it all written down. I might need a lawyer.

- So our communities were built in the 60s and the 70s, and they have small roads. Some of them only have sidewalks on one side. Some of them have no sidewalks. And some of the older parts of my neighborhood, we don't have sidewalks. So we don't really have that kind of infrastructure to handle a lot of cars coming down the streets. A lot of these are courts; they're dead ends, essentially. So there's nowhere to park a lot of cars. You can't block the mailbox. If you block the mailbox, the mailman will not deliver. The next day you may get a note saying you shouldn't have blocked your mailbox yesterday. That's how it is in our neighborhood.

- When you do have a B&B in a community, they're using your driveways to back up into them. They're turning around in them. There's a lot going on that's kind of disruptive. There's my trash to pick up and things like that.

- And I see that you guys are working really hard on this, and I know that Chairman Peace is a good task master on that in making sure that what comes out of this working group is going to be very good legislation, and it's going to be fair for everybody and work well. I'm very happy to be here today and listen to so much good testimony and great questions as well. I feel very confident that you will come up with something that I'll support next year. I look forward to that whole process. And I'll probably come down again and listen some more.

VII. Public Comment

- **Krizek:** But without further ado, let me introduce Mike Rioux, who is an amazing guy. He's lived in the community a long time. He's taken a leadership role on many issues in Mount Vernon, and he is our Mason Hill Civic Association president. Thank you very much for coming down.

- **Peace:** Thank you, sir, we appreciate you being here.

- **Mike Rioux,** *Mount Vernon Mason Hill Civic Association*: Thanks for the opportunity. In difference to Pia, we live in a civic association. We don't have any rules; we can't enforce anything. Everything is done by volunteerism. We have 112 homes in our community. We live about midway between Old Town Alexandria and the Mount Vernon Estate. That is a factor because those are very important tourist attractions. And right across the river from where we live is the National Harbor. And if you're not familiar with what's going on there, they're going to put a casino in there.

    - We have a home in Mason Hill that's been an Airbnb listing for about 12 months. It's a second home; it's not a primary residence. It has six bedrooms in it. They rent the Airbnb home to families. I've seen as many as six families walk into the home for about $450 a day. They have a minimum of two days of lease during non-holiday times, and seven minimum days during holidays. If you look at the site, it looks like a hotel advertisement.

    - Our issues are arm's length. We have safety issues. We have security issues. They have cameras pointing at my house—I happen to live next door to it—across the street at my neighbors' homes. This is the kind of a neighborhood where kids grew up playing in the streets. They don't do that anymore. We have concerns about emergency service vehicle access because out of all the roads in our small community, five of them are on cul-de-sacs. So in this particular case, it's fairly close to the end of a cul-de-sac. When you get five or six families moving into this particular home, you're looking at eight, nine additional automobiles. They park as many as they can in the driveway. They block the sidewalk. They fill up the parking on the streets, in fact, on both sides. So an EMS vehicle can't get through; it's one-way traffic.

    - There are two occasions where a commercial enterprise was making commercial television video tapes for Volkswagen. They rented the home. They started at

7:00 in the morning, erected tents in the street, blocked mailboxes, had all kinds of trucks.

- This is totally outside the bounds of what is acceptable to us as far as what we think Airbnb should be doing. Like Paul, we don't have any interest in prohibiting somebody from renting out a room or two, but when you take an entire home that's not their primary residence, and they constantly turn it over—oh, by the way, this has been completely rented every week of the year except when the people move out, the owners of the property come back, clean it up, and then somebody else is coming right back in the very next day moving in. I think we've seen as long as two weeks at one time. The typical rental runs either over the weekend for three to four days or five days during the week.

- Across the board, our 112 neighbors, with the exception of the one that owns the home, are very upset about what's happened to the fabric of our community. No longer can our kids play in the street. Some of the same issues that I described are the same concerns of some of the other homeowners and communities that are here from Northern Virginia and Tidewater. So from our perspective, it's not tolerable, and there has to be some limitations as to what's acceptable.

- We're also concerned about leveling the playing field between short-term rentals and hotels and things like that. If I was a hotel owner, I'd be very upset, especially since they have to pay all these taxes, and there are no taxes collected right now from these particular hosts. That has an impact on our infrastructure because those local taxes go to help repair our roads. If you're in Fairfax County, every time I want to get a pothole repaired, and I call up the department, they say they have no money. They can't put a sidewalk in. While that's not directly related, it does have an impact.

- We're concerned because of the casino across the street that profiteering landlords will move in. Right now we have four homes for sale in our small community. The people that live next to those homes are worried about the same thing that happened next to where I live and across the street from some of our other neighbors that are here representing our community. That is a big concern for everybody, especially if somebody finds out how great of a business model this is collecting $450 a day for nearly 90 percent of the year. That's a pretty good bit of change to put in your pocket, especially when you take away 97 percent of it or whatever the percentage is that we heard from this morning from the Airbnb folks.

- From our perspective, there should be some specific changes. First of all, it should be a primary residence if you're going to lease this out. By the way, the property owners own another home within 10 miles of the one that they're using for Airbnb. When they're not there cleaning it up, they move back to the other home. It should be a primary residence. We'd love to see the primary homeowner in there while other people are leasing it. That may not be possible, but that is our preference.

- We want to ensure that LLCs or other partnerships organizations cannot have the authority to go in and purchase these homes and lease them out like hotels. We want to avoid any provisions that prohibit HOAs or condominium associations from issuing covenant. I have a condo in Norfolk and we have a big old covenant book like that. You cannot lease your condo to anybody for less than a year. The other thing is they have a limit on the number of rentals. So when you get to a certain percentage where it's 50 percent. If you're the 51st person, you're out of luck until somebody else moves. I'm not saying that that's applicable for a residential community, but I have to deal with that, and I have no control.

- We brought in Fairfax County zoning people, coding compliance, to this particular house. They met with the homeowner. The result that came out of that is they are waiting to see what happens with the state. Even if you look at Fairfax County ordinances, a limit of two families in a home, we can't even enforce that because the county is waiting to see what happens to the state.

- There should be a minimum safety requirement. A lot of the concerns that we heard at our pre-meeting we had today is what happens if the house burns down and my house burns down because of their house. My insurance covers that, but I'm still out of luck. What happens if my insurance doesn't cover the rebuild cost in that? We're not certain what is in this home as far as monitors and carbon monoxide, security stuff like that. Those are all very important issues to us.

- We would like to see Airbnb establish an application—anybody that writes code should be able to do this—to be able to collect the taxes and remit those to the state. I don't understand why they have so much resistance to that, but that should be done.

- We'd also like to see short-term rental hosts or whatever you want to call them be licensed. That would be one way to track to see who's leasing these homes. If they were licensed and they had to register with the county or the state for a minimum fee, let's say $50, then you can find out who's doing this from a commercial perspective, who's doing it from a tax-collection perspective. It would also provide some revenue source maybe to go reinforce some of the codes for that particular county, which is very, very important to us.

- One of the issues we have today is if there's an issue or an emergency, we don't know who to contact other than Airbnb. The people who own the house next door to me, they haven't given us any information to contact them. There should be a requirement to provide some information to the people who are leasing their property but also to the people that are in the community so we can contact them or somebody in the event of an emergency. And right now we have no idea if something happened what to do other than call the police or the fire department.

- With that, I'll be glad to answer any questions.

- **Peace:** Thank you very much. Delegate Bulova, you had some questions.

- **Bulova:** Yes. Thank you very much for taking the time to come down here to Richmond and testify. I live in a community that has a civic association. As I mentioned before, I want to make sure that regardless of whether you're in an HOA or a civic association that you're protected in all this.

    - I guess what I'm seeing here, unfortunately, is a real breakdown of the enforcement of rules at all levels. I know we're not here with respect to Fairfax County. I guess I'm disappointed that Fairfax County code enforcement would use this ongoing process as an excuse not to enforce rules if they're already on the books. If they're on the books, they should be enforced. I guess the point of my question is it appears to also violate a number of rules that Airbnb has established internally, as least from what I heard. And I was curious whether you had approached Airbnb, and what the experience was like, and whether they were cooperative or whether you've tried to go through that process yet.

        - **Rioux:** I did send an e-mail to customer support and never got a response. That's not untypical like a lot of online services where you try to get somebody to respond. I did try contacting Airbnb through their telephone number and their e-mail address, but I haven't received a response. That was about three weeks ago.

- **Bulova:** All of us, representatives, we like to solve problems, especially things like that. So since you're here, and we have the Airbnb people here, and we had mentioned earlier of a hotline number that you can call and if they get enough demerits or if it's something egregious enough, they just kick them off. Before you leave, I would like to make sure they have that conversation with you and really anybody else who might have a concern.

    - **Rioux:** Ms. Irvin walked out the door, so I don't know if she's still here.

- **Peace:** Bulova says I read his mind. We'll make sure that connection takes place. Hopefully that will work in your favor. Are there other questions? Mr. Dicks.

- **Dicks:** I just have one question. I listened intently about the lack of code enforcement in Fairfax County, and that has not been my experience representing private clients in Fairfax County for a number of years. Perhaps Paul could assist you with contacting Code Enforcement. There are occupancy restrictions, which clearly have been violated in this case. There are parking restrictions, which have clearly been violated. There are a number of situations where our multi-family clients in Fairfax County have been zinged a number of times on offenses much less offensive than what you've experienced. I think that's a good resource to check with Fairfax County. And I absolutely agree, there is no reason to not enforce the current zoning restrictions regardless of what happens with this legislation because zoning applies anyway.

    - **Rioux:** Those particular codes are what I call reactive; they're not proactive. They react to complaints.

- **Dicks:** That's correct.

    - **Rioux:** We complained and somebody did come out. In fact, we had a subsequent meeting on another issue with Code and Compliance, and I brought the subject up of Airbnb. I got the gentleman's name, sent him an e-mail. He called me back, and he said he was going to send me the report as a result of the visit to this particular listing. We never received a response. I followed through three more times. I'm on a first-name basis with Dan Stork, who is our Mount Vernon district supervisor. He keeps promising he's going to look into it. I'm still waiting for those responses. We're not giving up. I'm just saying right now that we're not getting the type of response in a quick fashion like we'd like to see happen.

- **Peace:** I appreciate that. I'll just say much like I just said about the company not responding, government, state, local, whatever level, should be responsive. We have representatives from VACO and VML and others who've taken great interest in this legislation. And we would encourage them to do a self-check and self-reflection and inventory of are they doing what they are already authorized to do and enforcing likewise. You make some very good points and we appreciate that.

- **Gordon:** That's kind of the question that I brought up before. If you have a home in Fairfax where it's over occupancy, it's there on a long-term basis. The question then that comes up with short-term rentals is that it fluctuates. If we have a zoning violation and it's over occupied, we go in and you can then verify they have 30 days to correct it. But if you have a short-term rental, you go in, it's corrected the next week. But then it's over occupied again. As we look at this legislation, that's what I think we need to discuss because it put localities in a hard spot because it doesn't fit the traditional zoning violation.

- **Peace:** Right. We are in a new world. If anybody's been following politics or anything else lately, we know the old models—that goes for how we structure government—may not apply to the world we live in. We have become more fractured as a republic in many ways, in every way. Trying to put old models onto new ideas is like trying to put a round peg in a square hole. There are disruptions taking place in every industry, whether it's government or politics, hotels, taxes, so that's why this is a great opportunity. What I said at the very beginning of this process, let Virginia be in the vanguard and show how government can react more appropriately to changing conditions. And we are always in a reactive position no matter what. I appreciate what you're saying and accept that as an invitation to carry on.

    - Any other comments for this fine gentleman? I know we have a number of other people who have been here and have been here for three hours. We've heard a lot about the mechanics, the taxes, property owners associations, and property manager concerns. We've had legislative input. Are there members of the public—Mr. Terry, hold on just one second—who have been here and been patient that would like to offer something that we have not heard? Yes sir. If

you'd come up and just state your name please. We're going to operate on our custom which is three minutes, if we can do that. Thank you.

- **Jack North:** Good afternoon. My name is Jack North. My wife and I own and operate Mayhurst Inn, a legal B&B, and it's also our home in Orange County, Virginia. We've been at it for 13 years. I'm also a member of the board of directors for the Professional Association of Innkeepers International, the largest B&B association in the country.

    - We wonder why Airbnb is trying to change something that's not broken. Virginia already has unique laws and rules and regulations that apply only to B&Bs. Legal B&Bs know better than anybody else that we are not the same as hotels. Because we're different, we have worked in harmony with other accommodation providers and with state and local governments to develop rules for building codes, occupancy requirements, and fire and safety regulations that apply only to B&Bs. We work with the Virginia Department of Health to create unique regulations just for B&Bs. We work with the Virginia ABC office to create specific rules for a B&B ABC license. Finally, we work with communities and our neighbors to develop equitable laws and regulations and to ensure that our businesses have a positive impact on our neighborhoods. And as members of those communities, we pay our fair share, because we share the products and services they provide.

    - Both B&B owners and Airbnb hosts provide accommodations for money. Many do so from their own private homes, like us. Both provide beds or rooms or old houses for rentals for a day or a week or just full time or part time. Both use the revenue to augment their income and pay the mortgage. Both are de facto and de jure businesses. I was really appreciative to hear the tax folks say that repeatedly.

    - And Virginia requires that businesses register. There is no difference between Mayhurst and my wife and I and an Airbnb facility and their host. Why should the rules be different? Airbnb wants to create new terms and new rules that apply only to their listings. Why, as nothing has changed. Airbnb wants to hide the identity of their listings and their owners from everyone. Why? Airbnb claims to be something unique because they're part of the sharing economy. So what? Nothing has changed. There is no difference between a B&B and an Airbnb host.

    - Sharing is about working with other accommodation providers, the state and communities to develop equitable laws, codes, and regulations and truly level the playing field. Sharing is not about just paying the taxes. Sharing is about obeying all the applicable laws and regulations and paying all the applicable taxes and fees that support our communities. It's not about picking and choosing the laws you want to follow or redefining terms to avoid them or encouraging hosts to break the law by not requiring compliance. Airbnb does not require compliance to list.

- Sharing is about working within each neighborhood fabric. Sharing is not about violating that fabric and that environment by bypassing the input and the rights of people who live there.

- If the committee really wants to come up with groundbreaking legislation for this segment of the accommodation market, they should follow the recommendation that Senator Norment made in a letter to Delegate Peace in May and put real B&B owners and real Airbnb hosts on this committee. We know this business; we'll come up with good solutions.

- Airbnb and its hosts need to stop trying to change everything and undermine local governments and communities. Airbnb hosts need to get on board and start running their businesses in Virginia. It's really fun, and it's real easy. It's a piece of cake to pay the taxes.

- We the people of Virginia, and not Airbnb, need to accept the example of how to do this for the entire country. Thank you.

- **Peace:** Thank you.

- **Josie Balatto:** Thank you, sir. My name is Josie Balatto. I am not anti-business. I am pro-family. In May, Delegate Peace posted that this workgroup had started to debunk myths. I do welcome the opportunity to take part in that effort. I must admit, though, that it is incredible pressure to make five hours of travel worth the three minutes I'm allotted today.

    - You are addressing issues that affect eight million or so residents. Many of our citizens object to the idea that residential motels can appear without warning or notice next to where they live. But those of us directly impacted lack a dedicated voice on your panel. Because of this, I find myself wondering who will speak for us in your final report.

    - The daily rental debate seems to revolve around everyone and everything except what is happening to us, the residents next door. There is a lot we don't know about daily rentals. We don't know if a house has been booked through Airbnb, FlipKey, HomeAway, Craigslist, or any of the 20 or so online companies. We don't know how many people will arrive, how long they will stay, who they are, or why they have come. We don't know who is monitoring how many people are on the premises. We've witnessed teams of people dragging sleeping bags into houses advertised with 10 beds.

    - What we do know is that some property owners rent out multiple areas inside their house like a boarding house. We also know many property owners depart the premises long before the strangers arrive, and they never lay eyes on these folks. They leave it to the neighbors to experience the thrill of the cultural exchange that Airbnb promotes.

- We know many groups are local visiting these houses. They book large houses for birthdays, weddings, and business gatherings. They bring groceries and casseroles from home. These people are not tourists and they are not pumping extra money into our economy. We know that more groups book houses than are found in the posted reviews. What we don't know is why.

- Finally, we know that there are apps now offering bookings by the hour of bedrooms, pools, hot tubs, decks—you name it. Thing about it. One group might be renting just the hot tub, while another is using a bedroom, and a third is grilling on the deck, and all are paying separately for their experience. How special is that?

- Airbnb touts its data transparency. So I ask, where are the listing figures for the other platforms operating in Virginia? When they state neighbor complaints are rare, and you've heard today that it's only been up for a month, where are those sources being drawn from listing the fact that there are only rare complaints? Is this a statement about Virginia or Timbuktu?

- Before you upend all local zoning, shouldn't all sides have access to this Virginia data? But don't expect it to be readily offered. When New York State sought the data, there were reports that Airbnb would release it to the lawmakers only after they made appointments to read a physical copy of the information at a location chosen by Airbnb. From our experience, it appears they get to choose while we all lose.

- Why would Virginia get into bed with these partners? Please don't forget us, the eight million. Thank you.

- **Peace:** Thank you.

- **Jenny Boscela:** My name is Jenny Boscela. I am a beekeeper, and I am also a small business owner in Fairfax County.

  - What is a neighborhood? It's comprised of roots and some are deep—this is years of living in a neighborhood, decades of living in a neighborhood—and some are shallow. We have long-term renters who live in our community.

  - I have lived in and been part of the social fabric of Northern Virginia for the past 30 years, 28 of which have been in Fairfax County. I can attest to the many changes to the area and our suburban landscape in that time. I and my husband have owned three homes in the county over that period, and I have been and continue to be a community activist there. Buying a house and investing in a neighborhood is the most major purchase and investment in most people's lives, and it is not a decision made lightly.

  - I'll give you a brief zoning history of Fairfax County. In the early and mid-2000s, zoning issues came to the forefront in the county and around the country as transient people looking for work moved or congregated closer to hubs where

they could find day work. Transient day workers and other low-paying job seekers sought cheap living arrangements close to these areas, and dormitory-style arrangements within single-family homes multiplied throughout and close to Northern Virginia suburbs.

- One such house opened next door to our home, a rental to at least eight men, including a garage service for automobiles. The Fairfax County Department of Planning and Zoning had formed a task force with county police and the Health Department to combat overcrowding, fire and safety hazards, multiple kitchens, and commercial businesses being conducted out of residential areas.

- In the same neighborhood and time frame, a commercial business petitioned the Zoning Board of Appeals to move a business from the commercially zoned area in Annandale to a home in our neighborhood zoned R-2.

- If you've ever been to Annandale or the cities of Falls Church or Vienna, you can see 60-year-old houses on main roads that were once residential and have turned into commercial districts. I led the charge to prevent Commercial Creek from the commercial business district five blocks away from encroaching on our R-2 neighborhood.

- After 2007, another surge in multi-family overcrowding and other zoning concerns hit our area hard. I and my neighbors in the Walters Woods, Malbrook, and Sleepy Hollow Estates neighbors—that's 30 neighbors and counting; I've only known about this for about the last 10 days—believe that commercial and quasi-commercial transient use of single-family homes needs to remain separate from residential use. We bought our homes on the strength of our community, invested life savings, raised families here to maintain the strength, and strengthened the integrity of the fabric of our neighborhoods and surrounding communities, and maintained property.

- The sharing economy does not fit in this scenario. Any change to our zoning ordinances and enforcement from a county-centered operation to something more nebulous and a seemingly unenforceable approach would turn the clock back 25 years to the days of wild west zoning issues, including illegal boarding houses, under-the-radar commercial enterprises conducted out of residential areas, both of which I have personally organized community support to fight in Fairfax County over the past 20 years.

- The county continuously monitors the pulse and is quick to respond to our rapidly changing area and our unique and specific needs as a major metropolitan area within a few miles of the nation's capital. Fairfax County and each individual county in Virginia needs to stay connected and responsive to their respective citizens within the Commonwealth and keep separate commercial from residential use. They need to keep the regulation and enforcement piece under county purview. Any sort of short-term illegal transient lodging needs to be regulated like any other commercial enterprise and not sacrifice the blood,

sweat, and dreams of homeowners which will forever change the character of our neighborhoods.

- See Airbnb and the like for what they are: commercial businesses operating illegally at residential homes. License, tax, and regulate them accordingly. Thank you.

- **Peace:** Thank you.

- **Beth Erickson:** Good afternoon. My name is Beth Erickson, and I just want to say thank you very much—

- **Peace:** Excuse one second; I'm sorry. Staff reminded me if there are written comments that you have that you've read off of or prepared, we would want to receive a copy of those so that we have that on our record, if you will. Again, I know you were going to say who you are. I appreciate that. Thank you very much.

- **Erickson:** That's all right; I'll start again. My name is Beth Erickson. I thank you so much for having me down this afternoon and allowing the voice of a Convention and Visitors Bureau, a destination marketing organization, at the table. I'm going to talk to you today about data, and I want to talk to you about how I use data, why we use data, and how we use data to drive decisions.

  - On the briefing document that I have before you, a standard briefing document, there are two things I want to touch base with you on the front page. And then in the interest of time, I'm going to ask you to turn it over. So we're going to create a little breeze.

  - On the first page, Mr. Haskins has touched a little bit on this when he talked about the state codes and state taxes being collected. This is where we start talking about the community-driven, the county-driven taxes that are collected, and how they're collected, and how they're used.

  - There's a small primer here because we are one of the counties that has that additional above 2 percent. We have 5 percent TOT that we collect. I'm going to talk about how we use it. The second is talking about VDOT. And I was so glad to hear Mr. Haskins touch base on that. VDOT in addition to the 0.7 percent additional tax, there's also an additional 2 percent TOT, transient occupancy tax, that goes directly to the municipalities for road work, bridge constructions, things that really improve the quality of life. I don't want those to be lost in the din of the discussion.

  - This is the point where I'm going to ask you to turn over. And as we do, I'm going to tell you what we do with that TOT. What we do with that TOT is we generate more revenue for the Commonwealth of Virginia. In 2014 alone, state tax receipts in Loudoun County were about $40.9 million, and that was up 10.4 percent over the previous year. We're seeing it grow. Tourism generates about

1.6 billion in Loudoun County alone and supports 16,000 jobs. We're not talking about anything other than job growth and revenue production in my presentation.

- So on the top of the second page you're going to see a matrix. That is a very brief moment into my brain every day when we sit down and take a look at what we're projecting and how we're using the data. I know that I have 37 hotels, resorts, and conference centers in Loudoun County. Our inventory is about 5,700. I know our average daily rate. I know our occupancy. You're going to see there's an asterisk there. How do I know that? It is reported on a weekly basis to Smith Travel Research. Everybody supports it. Everybody puts the information in. From that, I'm able to work with our county's jurisdiction to predict what that 2 percent VDOT TOT would look like. What will our county be able to count on for TOT production out of that 5 percent? Straight across the board—it is black and white.

- I'm going to bring you down to the next one, which is the Airbnb. You're going to see very quickly across the board what we've got going on in Loudoun County. I spent a lot of time on the website. So I know what we have in terms of entire homes that are being rented. I can tell you what private rooms are being rented. I can even tell you, in my opinion, the really scary thing of shared rooms. That's okay; there are only 12. But I'm going to go ahead and walk you through left to right.

- You're going to notice that when we start talking about the fact that there are 919 Airbnb listings that are on Airbnb's website for Loudoun County, which I use Edward's data, specifically when we look at average time of stay, that starts getting us up to some significant room nights in Loudoun County. Sixteen percent of our available hotel rooms are Airbnb listings. They are not taxed. They are not held to the same accountabilities. Ladies and gentlemen, that is a staggering number to me, and it's growing.

- In that block, you're going to see a lot of gray information. The gray information is gray because I don't have that data. I cannot help my county project. I cannot help the Commonwealth budget because I do not have that data. I don't know what the occupancy is. I don't know what the length of stay is. And in all honesty, that's critical information so that I can start looking across the board on what we should be projecting. That is what I'm here today to talk to you about. As we continue in these discussions, I am happy to continue the dialogue. That is critically important to us. Data is the new oil. Data is what we need. We need transparency. There are those behind me that are going to speak more passionately—I'm passionate about data. But they may be talking about the other aspects. Those are all critically important and warrant your listening.

- So thank you so much for your time. My contact information is at the bottom, so please feel free to reach out to me at any time. And Pia, if I may, next time you're in Leesburg, call me. Let's have a cup of coffee.

- **Peace:** Thank you for being here. I think Loudoun is very lucky to have you, and we want to make sure Loudoun can get those revenues that it's not getting right now. And as someone whose family founded Purcellville, I love Loudoun County, and I appreciate what you do.

    - **Erickson:** Thank you so much. I appreciate your time.

- **Bob Mathias:** Mr. Chair, members of the committee, I'm Bob Mathias from the City of Virginia Beach. I want to talk about three things today: equity, revenue, and health, safety, and welfare. I've sent around a resolution adopted by city council back in January where they address these issues and opposition to Airbnb. I think we all know there are multiple other platforms out here, but we've been talking Airbnb today.

    - For health, safety, and welfare, enjoyable quiet of your property. Delegate Knight alluded to this. Back in April, we had 100 people at a house that was rented through Airbnb, and a gentleman did not survive the evening. We had a hard time, almost an impossible time getting hold of the owner.

    - We had a public hearing related to this issue, and we had a number of individuals come in and say they bought a house in Virginia Beach, put their equity into it, put their sweat, love, and tears into it, and folks rented a place next door to them, and their entire life has gone to absolute heck. They said the people would come in for three days and all they do is drink and raise heck. If they come in for a little longer, they're less troublesome. But nevertheless, that's really causing an issue for people's biggest possession.

    - We're a strong property rights state. You think you should have a right to rent out property if you want to. But I think your ability to rent your property shouldn't overwhelm everybody that's around you. And you've heard a bunch of horror stories about people parking in yards and things like that. We have the same thing.

    - Virginia Beach has an 8 percent transient occupancy tax. We have a 6 percent state sales tax because we have the seven-tenths added for the region. So seven-tenths of the state sales tax goes to the Hampton Roads Transportation Accountability Commission to help build the roads and bridges we need in Hampton Roads to help tourists get in and out. It's two of the biggest engines for the Commonwealth. Half of a percent of the state sales tax goes directly to VDOT. I don't think you all should be forgetting that, and I'm sure you're not. And then of the 8 percent transient occupancy tax we have, a little over 5 percent of it goes to what we call our Tourism Investment Program. That's paying for things like the debt service on improvements we're making at the oceanfront for a private developer to put in a $240 million arena. No state funds are involved; they are all local funds and the investors' funds. If we are starting to lose money because of revenue that's rightfully due us, I think that our bond rating could be affected in the future. That's something you all need to consider.

- We think they're at 800, and probably much more than that, Airbnb rentals in Virginia Beach. We only have 8,000 hotel rooms at the oceanfront. So we have folks that are coming in and staying without paying taxes, without being regulated equivalent to 10 percent of the hotel rooms we have at the oceanfront. So where is the equity for those hotel owners, whether they're homegrown or large corporations who have invested in Virginia Beach in expectation that their business model is going to survive and be workable? It's not going to be workable anymore with the issue with Airbnb.

- Thank you very much.

- **Peace:** Thank you.

- **Jim Moffat:** Mr. Chairman, committee, thank you. I'm Jim Moffat. I manage Sandbridge Realty, and I wanted to give you a perspective on property management. We have 450 weekly vacation rentals.

  - As a weekly vacation rental company, we take full responsibility for our actions. Our sheets and towels are sanitized and wrapped. Our cleaners go through intense training processes in a classroom setting and also in the field. Important use of chemicals and understanding material handling data sheets are an important part of our business, as are safety issues like dealing with bloodborne pathogens.

  - We have services like monthly pest control. I even have three certified bedbug dogs to review the properties on a monthly basis to protect our owners and guests.

  - The guests have a way to talk to us personally and directly to us. Any issues are handled quickly with cleaning or maintenance or any issue during their stay. Airbnb takes no accountability to that. All the responsibility falls on the owner who has no training or understanding of the short-term rentals. There are no codes of standards. Airbnb rents start at age 18. This opens up a host of problems. There are no controls for safety for the guests. Everything is reactive.

  - I want to take a minute to talk on the safety of residents and what happens in the time of an emergency. Some of this has been discussed already. We are there to let the police in and handle the situation. The local police actually have my personal cell phone number, so they're able to call us with any issues. And we're right there to handle it. Again, we're taking responsibilities for the house we are managing, not the case sometimes with Airbnb.

  - After 25 years in the business, we realize that to eliminate a lot of the issues with major parties, we only rent to over 25 years of age and a minimum of a three-nights stay in the Sandbridge area. Residents can call our offices on issues 24/7 with an answering service we contract to take care of those issues. We screen our guests coming through Facebook, Myspace, Snapchat, looking for unauthorized

parties. We don't want that type of person in our rentals either. There is no age limit or screening process in renting through Airbnb. They require two forms of ID.

- We have dealt with three-day weekly rentals for years. Sandbridge Beach is a beach destination. But Airbnb is going into residential areas that have not dealt with tourists and nightly stays and the disruption that goes along with it. There are no controls for the safety of the residents; there is only a recourse, which is calling the police.

- Close relationships are built over time. We're involved with the residents through the civic leagues. We have close relationships with the police. We have relationships with the local commissioner of revenue and the city council. We can get answers to our questions very quickly, and we can solve the problems as a team.

- Another part is Airbnb has a million dollar host guarantee, but this is used after something happens. These are not preventative measures. When the owner has over $300 in damage, they have to file a police report to get reimbursed. That owner may not even live in town. This is not a protection. Now you're going to tie up police services for minor issues. Our company alone paid out $56,000 last year on just minor incidences or minor breakage, and we don't have to call the police for any of that to make sure I have a report to file.

- Lastly, the revenue stream is paid by the homeowner, whereas with the property management company the taxes are paid through our company for the owner. Airbnb is disruptive e-commerce, not a wave of innovation. This is something that can really upset our business model and many others. Thank you so much.

- **Peace:** Thank you. May I ask you just a brief question? There is a little angst directed at Airbnb or whoever is doing the hosting platform. Do you personally go and speak with the owner of the property? They're the ones that volunteer their property that they bought in your neighborhood to be on the platform. I feel like sometimes we are a more connected society, but that may be in name only or through social media. We don't even know our neighbors many times. Are we making personal connections over the concerns that you speak to? I think that's probably just a global question for everybody.

  - **Moffat:** No, it is with the owners. I'm speaking for the owners that I manage for.

- **Peace:** Right. Okay, thank you. I appreciate it.

  - **Moffat:** Thank you very much.

- **Kate Welsh:** Good afternoon. I really appreciate everyone staying to give us all a chance to voice our thoughts.

- **Peace:** And this is not the last meeting we're having, just so everybody knows.

- **Welsh:** I'm here with my neighbor, and we promise together to take up about six minutes, so that should work.

    - My name is Kate Welsh. I'm a resident of Fairfax County. I'm here today because I really want to focus the conversation on the other people that are impacted by these rentals, and those are the surrounding neighbors.

    - We have an Airbnb rental on our cul-de-sac. It is a situation where the property owners completely vacate the property and run it like a hotel. There are new people in every couple of days. It is completely unbearable. I want you to hear what we have to say because we have property rights as well, and we very much want those to be taken into account as you move forward with this legislation.

    - I want you know specifically what we are sharing as a result of the sharing economy. Because of the hotel on our street, we're forced to deal with a regular influx of strangers in our neighborhood by the day, the week, or the weekend. We never know when people are coming, how many, or for how long. These strangers have no ties to our community. And even though as I heard earlier, maybe the person doing the booking is getting a background check, but what about all the other people that come into the house? That gives us zero comfort as neighbors.

    - As I said, the owners leave the property, so they don't actually meet these strangers. And most importantly, they don't know how many guests the strangers allow in or what's happening on the property while they're not there. A short-term rental that allows an owner to leave and hold no responsibility for the property puts our kids, our senior citizens, and our entire neighborhood at risk.

    - Everyone keeps talking about the actors; I'm talking about the rentals themselves. It's not a one-off. This is the nature of these rentals. They are hotels in residential neighborhoods, and it is misery. I'm speaking for myself, for my neighbor who is here, for our other neighbors who couldn't be here today, a growing number of families in our community who are becoming aware of this practice in our neighborhood, and really a growing number of very concerned residents throughout the Commonwealth.

    - When people choose to become short-term rental hosts, we as families in residential communities lose. Short-term rental hosts choose to open their property up to strangers. They choose to vacate their homes while an unknown number of individuals have total freedom at that property. They choose to leave their neighbors and the community with all the oversight and enforcement issues of activities that they don't monitor. How is a 24/7 hotline going to help me? Does that mean the rental is going to stop? Does that mean someone's going to come and intervene? Really? That gives me zero comfort.

- Hosts choose to ignore neighborhood concerns or objections. We have talked to our neighbors who own the property. They are *not* interested in hearing what we have to say. They are making too much money running a business out of our residential community.

- Short-term rental hosts make these choices and neighborhood families lose. We lose our quality of life, our sense of security, the things that go to the very heart of living in a residential neighborhood. Short-term rentals do not promote the lives of families in residential neighborhoods; they take away from our lives.

- With that, I'll hand it over to my neighbor. Thank you.

- **Female:** I'm a full-time, self-employed working mother of two, and I came down here today to try to protect not only my family and my neighborhood, but families across the state of Virginia.

    - We bought our home on a cul-de-sac in Falls Church to raise our family in a stable, secure residential neighborhood. And as Kate mentioned, we now live next door to a daily rental property. Our neighborhood is no longer residential, no longer stable, and no longer secure.

    - We didn't buy our home to live next door to a hotel, but if it was a hotel, at least the occupants would have to provide identification and would not be allowed to bring in as many additional guests as they please. A manager would be on site to monitor activities. What we live with is strangers renting the house next door online for a minimum stay of two nights. Their property is advertised for rent every weekend, every holiday for the entire summer. Strangers aren't screened or monitored, and they're given the access code to enter that house. They are never met by the owners. These strangers who have no ties and no accountability to our neighborhood are provided an access code to our cul-de-sac and to our children.

    - I ask you for a moment to walk in my shoes. There have been nights where my children didn't sleep because of the noise from parties hosted by transient occupants. Lewd behavior from their bedroom windows has been visible. This week we're lucky, at least there are kids next door. But every day you don't know who, when, how, or what will be next door to your children.

    - Does the loss of the stability of neighborhoods matter? Does the financial gain of a few outweigh the rights of families, the protection of children? As noted in an article in the official magazine of the National Association of Realtors, a single family home or condo unit next door to a short-term rental where occupants change every few days will take longer to sell and bring in lower offers. Does the loss of the value of family homes, our investment, and our children's education for college, our retirement, does that matter?

    - I'm here to plead with you to ensure that local governments and local authorities are truly, and I mean truly, able to regulate, truly able to enforce daily rentals of

transient occupants. If not, Virginia parents lose the ability and the right to own a home in a stable residential neighborhood. Children lose the right to play and grow up with the security of a stable residential neighborhood. We all lose the American tradition, the Virginia tradition of honoring and valuing family neighbors.

- Thank you for your time.

- **Peace:** Thank you.

- **Todd Divers:** Mr. Chairman, members of the working group, I'm Todd Divers, the Commissioner of Revenue from Charlottesville. We've be wrestling with this for quite some time. I just wanted to make a few points while I had the opportunity.

  - There was not much discussion of BPOL today, which is obviously pretty important to the commissioners of revenue. I assert that it is the responsibility of the commissioners of the revenue to determine what constitutes a business within their jurisdictions. I'd like to make a couple points along those lines.

  - First, the prohibition contained in § 58.1-3703 against the locality's ability to impose a local license fee or tax on the business of renting real property should not apply to limited residential lodging activities to the extent that such activity is substantially similar to the categories of use exempted from the prohibition, namely hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses, and boarding houses.

  - Number two, advertising one's services on an internationally available travel website meets the threshold for creating a rebuttable presumption that a person is engaged in a business, as set out in § 58.1-3700.1.

  - Access to information indicating the actual frequency of an activity is quite helpful to commissioners of revenue in making a determination as to whether a business license is required. Such information should be available to commissioners upon request from online platforms. In the absence of such information either from the platform or the host, as contemplated on Senate Bill 416, commissioners must make use of the information to which they have access. Shielding owner identity, location, and frequency from commissioners not only helps create the potentially mistaken assumption of a continuous and regular course of business, but it also flies in the face of our responsibility to collect accurate tax information from business owners. In other words, it is not a given that every listing on Airbnb will be subject to a business license. As in all other areas of business taxation, access to accurate information allows commissioners to make appropriate determinations.

  - Business License is a gross receipts tax. I can't speak for all commissioners, but I personally oppose the imposition of an arbitrary threshold of activity in terms of

time—days, weeks, months, etc.—to qualify for a business license. What is to prevent such an arbitrary standard from being applied to other sorts of home occupations and to other businesses in general?

- If a bright line is desirable, a gross receipts threshold is preferable. Such a threshold currently exists for the very specific category of home occupation, namely direct sellers. That seems to be a reasonable starting point of discussion, if we're looking for a bright line. Commissioners will still need access to host data in order to make an appropriate determination.

- This is another point I want to make. Despite being valued at $30 billion most recently, which is up from 25 and a half billion about a year ago, making it the highest valued hotel operator in the world, it has been argued that it is not feasible for Airbnb to remit trust taxes on behalf of its host clients directly to Virginia localities. I submit that all of the other major hotel chains manage to report and remit trust taxes directly to the localities for the millions of transactions taking place in thousands of properties across the Commonwealth. To suggest that Airbnb cannot manage to do likewise strains credulity.

- And then finally, it is not appropriate for a local option tax to be administered by the locality in only some instances and by the state in others. Senate Bill 416 proposed making one class of taxpayer subject to state oversight and audit procedures, while all others remain subject to local oversight and audit procedures for the same tax. This is inherently unfair. Thank you.

- **Peace:** Thank you for your public service as well, Mr. Commissioner. Yes, you'll be the last speaker.

- **Male:** Mr. Chair and members of the working group and the Housing Commission, you've taken on a very challenging task, and I appreciate very much the work you're doing, and I applaud your search for solutions.

- **Peace:** Thank you.

- **Male:** I live in Fairfax County, and I was HOA board president for 12 years. This has increased my awareness of these kinds of issues. Through that, I have been in contact with HOA and civic association leaders all across Fairfax County. The alarm bells you have just heard from some members of the working group and from speakers before me as ringing loudly all across Fairfax County and across Virginia. We are very concerned.

  - Pia Trigiani mentioned that a large portion of HOAs do not have the covenants that protect them. That is of great concern to us, so I hope that one result of the working group would be that HOAs that do not have the appropriate covenants but they do pass rules, that you'll find a way to protect those rules from the new leasing restrictions to find a way to not allow leasing restrictions to be abrogated in any way.

- I have stayed in Airbnb and I had a very good experience. Every time I have stayed in a person's home, that person was present in the house. That is exactly how it should work. I applaud that kind of business model. What we need to do is dramatically reign in the leasing of unoccupied apartments and houses. That is very detrimental to neighborhoods, as we've heard about. It is also drying up important parts of our housing stock. Please find a way to make that happen.

- Thank you.

- **Peace:** Thank you very much. Thank you to the members of the workgroup, the public, and others who have taken an interest today. We're going to have our next meeting of the workgroup on August 18th at the same time and same place. The issues identified today, including continuing inspection of the public safety matter, and certainly Mr. Bradshaw and others who he might want to bring are invited to talk about insurance. And Senator Stanley asked specifically about that. We need to make sure we cover those issues. And the local government, just general concerns I think we put on that agenda as well.

    - I think you can see that when we have one or two substantive issues on an agenda, it does occupy quite a bit of time. So we want to be mindful of your time.

    - If those three are acceptable, that will be the basis of our tentative agenda. Agendas are subject to change, of course. And please feel free to contact staff on those matters. So before we adjourn, Delegate Knight, did you want to have any closing remarks on the way out?

- **Knight:** Yes sir, I have four or five items that I saw, but I'll give those to Elizabeth.

- **Peace:** We'll commit to work with you and staff to develop that agenda.

- **Knight:** I had a little something on my mind. Senator Stanley, he wanted to make sure that I mentioned this if I would. We've had many, many meetings in Virginia Beach with constituents because we have a tremendous tourist industry down there. We have so many people that view tourism and all aspects of it as something we have to put together. But I've met with so many folks down there, and I had four to probably eight folks that I've been talking to, that I've had meetings with that had taken off of work to come today because they saw that we were going to have public comment on the agenda. Then somehow or another the agenda got taken down and there was no provision for public comment. They were calling me last night. I didn't find out about it until yesterday afternoon. I said I don't know what's going on. If there's not a public comment, they said they didn't want to come for this.

    - I would just like to say—and Senator Stanley asked me to say this too—that we are going to have a public comment at the next meeting, and that it will be on the agenda plenty in advance, and the agenda will stay up the way that it was

proposed. The people that I work for who are the residents of Virginia Beach are awful upset because they took days off of work and everything.

- Senator DeSteph, he and I represent overlapping areas. With the Chairman's permission, I didn't know if he had any remarks that he needed to make on that also.

- **Senator Bill DeSteph:** Actually, I think I represent probably the largest on both sides in the entire state that's impacted by this with not just 220,000 residents, but about 1.6 billion tourists a year. I'm sitting here writing down my questions and everything. Mr. Chairman, you and I will have a discussion afterward.

- **Peace:** Absolutely. That's a standing invitation. Thank you all very much. Make sure you book about five hours for the next meeting. And I apologize. I said August 18th. August 25th would be the next week on a Thursday at the same time.

- **Female:** Mr. Chairman, I have a quick question. A bed and breakfast from Yorktown were here earlier, but had guests checking in at five, so they had to go back. I do want to just make sure that that does make it into the record that they were here and wanted to speak about the licensing and the mortgages that small lodging properties have to go through, because I think that's something that we haven't heard from. But then also I have an entire stack that I'll pass around to all of my working group members of different scenarios of how small lodging is operating in Virginia just to kind of give you guys an idea of a day in the life of a small lodging property and what they have to go through to operate.

- **Peace:** Sure, that's very good. I appreciate that. I know you've been designated to represent the B&B industry, and we appreciate your input. Thank you.

VIII. Adjournment

- Upon hearing no further requests for comment, Delegate Peace adjourned the meeting.

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
SENATOR MAMIE LOCKE, Vice-chair
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VIRGINIA HOUSING COMMISSION

Short-Term Rental Work Group
Thursday, August 25, 2016, 1:30 p.m.
House Room 3, The Capitol

I. Welcome, Introductions and Call to Order

- Delegate Christopher K. Peace, *Chair*

II. Insurance Impacts

- Robert Bradshaw, *Independent Insurance Agents of Virginia*
- Joseph Hudgins, *Technical Consultant to Independent Insurance Agents of Virginia*

III. Bed & Breakfast Impacts

- Misty Williams, *L-n-L Hospitality Group: Inns of Distinction*

IV. Northern Virginia/Impacts of Short-Term Rentals

- Beth Erickson, *President & CEO of Visit Loudon*

V. Public Comment*

VI. Adjournment

*(Three Minute Limit)

SUMMARY

Virginia Housing Commission

Short-Term Rental Workgroup
August 25, 2016, 1:30 PM
Room 3 , The Capitol

Delegate Chris Peace , *Chair,* called the meeting to order at1:30 PM.

Members in attendance: Senator George L. Barker; Delegate David L. Bulova;; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee;* and Laura D. Lafayette, *Governor Appointee.* Edward Mullen, *Airbnb Corporation;* David Skiles, *Travel Technology Association;* Erica Gordon, *Hilton Worldwide;* Eric Terry, *Virginia Restaurant & Travel Association;* Amy Hager, *The Bed & Breakfast Association of Virginia;* Sterling Rives, *Virginia Association of Counties;* Ron Rordam, *Mayor of Blacksburg, Virginia Municipal League;* Mark Haskins, *Virginia Department of Taxation;* Chip Dicks, *Virginia Association of Realtors;* Robert Bradshaw, *Independent Insurance Agents of Virginia;* Maggie Ragon, *Commissioner of the Revenue, City of Staunton;* Brian Gordon, *Northern Virginia Apartment Building Association*

Staff: Elizabeth Palen, *Executive Director of VHC*

I. Welcome and Call to Order

- **Delegate Christopher K. Peace**, *Chair:*
    - We have a lot to get through today, as we did last time. We're very grateful for Bob Bradshaw, who represents Independent Insurance Agents of Virginia, and Joe Hudgins, who will be the technical consultant to Bob, who will go through some homeowner policy information.
    - But insurance has been a topic that has come up a couple of sessions. And so we kind of delegated Bob, who is our resident expert, to examine the Airbnb policy—to my knowledge, they're the only hosting platform to have such an offering—and also compare that to existing homeowner policies, the need for commercial policies, etc. My understanding is that Bob had the opportunity to examine that Airbnb policy and has some reports on that for the workgroup, and other items of interest. So we appreciate all the time that you've spent offline working with various stakeholders to bring this presentation today.

II. Insurance Impacts

- **Robert Bradshaw,** *Independent Insurance Agents of Virginia:* Thank you, Mr. Chairman. Yes, insurance seemed to be a minor issue of interest all the way through this process.

- As a matter of introduction, my name is Bob Bradshaw, and I'm the president and CEO of the Independent Insurance Agents of Virginia. Independent insurance agents write over 80 percent of the commercial insurance in the Commonwealth. They write between 35 and 40 percent of the personal lines insurance. They range from some of the largest brokerage houses in the nation to the single Main Street office in Wytheville, Virginia. Independent agents represent more than one insurance company and average around ten carriers, but they can represent companies into the hundreds.

- As a means of explanation, a State Farm agent could not join my association because they represent only one company, and they do not have ownership of their book of business. With that said, we represent close to 500 independent insurance agencies and over a hundred insurance companies with over 6,000 professional employees in the Commonwealth.

- Today I'll make some general comments and observations about insuring short-term rentals. Then my associate, Joe Hudgins, will provide a brief overview of the standard homeowners policy in Virginia. And then I will address some areas where the industry is unsettled and where potential land mines are for consumers and then specifically address questions presented in advance.

- Generally speaking, those who list their homes, condos, apartments, rooms, what have you, don't believe that they're entering into a commercial enterprise. They've not sat down with their insurance agent to determine what financial property and liability exposures they're opening themselves up to. Very few of our members have indicated that they have had conversations with their clients about listing their property for short-term rentals. And for those that have, they generally recommend that they do not do so.

- In short, insuring your home, extra room, apartment, or even couch on a short-term rental basis looks like it's easy money, and it is, until something goes wrong. What happens when somebody trips and falls in your home and is seriously injured? And for that matter, [what] happens when you share someone's home and get hurt on their property? What happens when the people you rent your home to trash it for no apparent reason? What happens when the people that you rent your apartment to decide that they like your home audio/TV system so much they decide to take it with them? And what happens when you forget to ask if anyone is allergic to peanuts when you serve them those wonderful muffins and they end up in the emergency room at the local hospital?

- There are a number of policies that cover any number of the scenarios that we have been discussing in this task force. Some of the policies that come into play, of course, are your homeowners policy, rental, dwelling, and special provisions for Virginia, and special coverage for Virginia, dwelling policy, and of course your commercial general liability policy. And I do want to emphasize that the homeowners insurance policy is specific to Virginia. A fair number of people

have sent me some wonderful articles that are really pretty good if you live in Colorado or California, but Virginia has its own approved homeowner policy.

- While as we will see, your Virginia homeowner policy provides some limited coverage, one problem with this market is that generally speaking, the standard insurance market, those insurance policies that need to be approved by the Virginia Bureau of Insurance, do not like the short-term rental business. For example, Travelers and State Farm may cover your homeowners insurance until they find out that you rent your home on an occasional basis. They may not be able to cancel your policy midterm, but they certainly non-renew your policy in the future. As we will see shortly, you may have limited coverage in your standard homeowner's policy, but there are plenty gaps in coverage unless you accept that you are conducting a commercial enterprise and speak with your insurance agent about getting a commercial policy.

- Now let me ask Joe Hudgins, our technical consultant, who has worked on the insurance company side for close to forty years, to briefly walk through the standard homeowner policy approved in Virginia. This policy may be distinctly different than the policies approved in other states. He'll then outline what we learned about the Airbnb host insurance policy. I stress, however, that as far as we could learn, as the delegate mentioned, Airbnb is the only online service that proports to provide insurance for the hosts that sign up for their program, at least that we could determine. And there are many, many shared platforms on the Internet. We provided the standard homeowner policy, I guess one for public consumption, as it were. Everybody on the task force has a copy, and we'll give the standard policy to Elizabeth so she can upload it to the Internet so people will have access to it. Joe?

- **Peace:** Thank you. If you don't have a copy, I'm willing to lend you mine. I think we were trying to make extra copies. But we're certainly going to put it online if that will help everyone as we go forward in this process. Thank you, Joe.

- **Joseph Hudgins**, *Technical Consultant to Independent Insurance Agents of Virginia*: Good afternoon. My name is Joe Hudgins. I'm a lobbyist, and I teach CE for the Independent Insurance Agents of Virginia. I'm a technical consultant. I'm also on the Virginia Insurance Continuing Education Board.

  - I've been in the business since 1970, just to give you a little bit of a background. Just got through teaching a homeowners course, and Airbnb came up as a question from a couple of the agents in the class. So I hope I can give you answers. The problem is, talking insurance right after lunch, most of you are going to be snoring before it's over with.

  - To Bob's point, Virginia is a little bit unique in the country, and I think unique in a good way. The homeowners form that we use is the ISO, Insurance Service Offices form. Most companies use ISO. The current standard ISO form is the 2011 edition. Virginia is using the 1991 edition with some amendatory

endorsements attached to it. But basically, for homeowners coverage, there are five basic coverages under your homeowners policy. The first three deal with your property coverages, and the last two deal with liability. So let me talk about the property first.

- This will go quickly, because there's not a lot there. But Coverage A under your homeowner's policy is what covers your dwelling, your house, and a garage if it's attached to your house. And there is absolutely no business exclusion whatsoever for Coverage A. So if you rent your house through Airbnb, and the tenant decides they want to burn the house down, then it's covered, no questions asked. There is absolutely no exclusion, as long as it meets the test of two definitions. It has to be the insured location, which means the resident's premises that's listed on the policy and the homeowners declaration page. It can have a mailing address, but it also has to have a physical address. So as long as you meet the test of the insured location and resident's premises, the house burns down, it's covered.

- The second coverage is Coverage B, which is *other structures*. It used to be called *garages*. But if you have other structures on your property—whether you have one, whether you have ten, whether you have fifteen—you have a specific amount of coverage for that. Typically, it's 10 percent of your dwelling coverage. So if you have a half-million-dollar house, you'll have fifty thousand dollars for your other structures. There is absolutely no coverage for that under the rental. So if you were to rent your garage apartment to Airbnb, a person, there's absolutely no coverage for that, unless you lease it to them as a garage. If you lease it to them as a garage, then there would be coverage. So you have an Airbnb person who's staying next door to you, and you go through Airbnb and rent them your garage for them to keep their cars in, that would be covered.

- Confused you enough? Okay.

- Coverage C is personal property. That's where it gets a little bit dicey. Let me make sure that I don't make a mistake here. It will cover personal property owned or used by an insured while it's anywhere in the world. At your request, we will cover personal property owned by others while the property is on that part of the resident's premises occupied by an insured. So if you're not there and not occupying it, then their stuff's not covered. It limits business property to $2,500. So if you have property in your house that can be deemed only used when you have an Airbnb person there, that property is limited to $2,500. I believe you can buy back coverage for that . . . if the company doesn't know what you're doing.

- Personal property not covered. The policy says that we do not cover property of roomers, boarders, and other tenants, except property of roomers and boarders related to an insured. It doesn't cover property in an apartment regularly rented or held for rental to others by an insured, except for that $2,500 sub-limit that you have. So you might rent to someone through Airbnb, and you have a downstairs apartment or an upstairs apartment. You might still be there. Business

data is not covered. So if you have records that you keep for your Airbnb business so that you can properly report that income to the IRS, which would not be covered.

- Let's see, that's pretty much it for the property, except for one major thing. Under personal property in the Virginia homeowners policy, coverage for personal property—it's what's called *named peril*. So it has to be a specific thing to happen for it to be covered, like windstorm, hail, theft. Theft is not covered—your personal property, your stuff is not covered for the peril of theft if it's from that part of a resident's premises rented by an insured to other than a tenant. So you rent your spot, you rent your house. And you come back, and you open the door, and you now have an empty house, that's not covered.

- That's pretty much it for the property stuff. Liability is kind of simple. If you look at the homeowners policy in Virginia, there is a business exclusion under the homeowners policy for liability. What that says is that there is no coverage for a business. Then the next paragraph says that there is no coverage arising out of the rental or holding for rental of any part of any premises by an insured. But to give lawyers some work, it goes on and it says—I shouldn't have said that, should I? This exclusion does not apply to the rental or holding for rental of an insured location on an occasional basis if used only as a residence.

- When I read that in a class, and somebody asks me, well, is it covered to rent your house, my answer to that question would be no. I'm serious. It's a subjective thing. A judge in Roanoke could say occasional is ten days. A judge in Norfolk could say occasional is two days. A judge in Fairfax could say occasional is fifty days. So the coverage is there, but it will be litigated. You can count on that.

- Again, there's no coverage if you rent a house that is not an insured location. Let me give you an example of that. You might have someone who has a house in Richmond and a house at the river. For some reason, they forget to renew their insurance on their house at the river, and they rent that out through Airbnb. That's no longer an insured location, and there wouldn't be any coverage. But that would be true for anything.

- Let me see what I've missed here. Under the homeowners policy under the liability section, you do have some limited coverage for damaged property of others. It's sub-limited in the policy of $500. And again, the question here is if—the policy says we will pay at replacement cost up to $500 per occurrence for property damage to property of others caused by an insured—so if you could be found someway liable. But then it goes on to say we will not pay for property damaged, property owned by or rented to a tenant of an insured or a resident in your household. So that would probably get litigated also because that's not a very clear, concise statement. When this policy was written in 1954, we didn't contemplate all this stuff. Again, it talks about not covering a business. Occasional rental is not a business.

- That's pretty much it. That's what the Virginia homeowners said. Now there is a Virginia amendatory endorsement that goes to this, but that doesn't change anything that I just said.

- We had a chance to look at the Airbnb policy yesterday or day before yesterday. That's your basic GL policy. It's written through Syndicate out of Lloyd's. It provides liability for the host. It's primary. It's not excess. It's a primary liability policy that it provides to the host. It has some things in it that would apply on a worldwide basis, but it's there. I can't think of anything other—it looks okay to us. If you have any questions, ask Bob.

- **Bradshaw**: Okay, here are a couple of points. First, I do want to thank Ed for stopping by the office. Believe me, we had a long list of questions that we were looking forward to reviewing, the Airbnb policy. And then we had the opportunity to ask questions from their general council.

  - But we were pretty generally impressed with the policy. Having said that, though—and again, Airbnb is the only one that is out there with a policy, so maybe we should be talking about the implications of couchpotato.com or whatever it is, the other rental places.

  - One difficulty I guess—and we've talked about this with Ed—is Airbnb does believe that their policy is proprietary. It's a marketing benefit of going through Airbnb, so they do not make it public. They do put information up on the website so you can look at that and say, generally speaking, here are the coverages. However, that does put an agent in a particular problem. Without the opportunity to look at it, your insurance agent must assume that none exists.

  - While Lexington Insurance provides a homeowner gap coverage policy for short-term rental hosts, and Allstate looks like it has a gap coverage endorsement for current insureds, the prudent insurance agent will try to find the insurance policies with endorsements to fully cover somebody who wants to get into the short-term rentals. It will be up to the host to decline to duplicative coverages, and the agent may very well ask the host to sign a statement that they've declined particular coverages. But certainly if they sign up for Airbnb and they're getting X, they don't need to buy a supplemental X policy.

  - Sort of the positive is that you do want the consumer to have the broad discussion with their agent, go back to Airbnb and say okay, where's the duplicative coverage, what do I need, what do I not need. It's almost easier with the other organizations or other online deals because they offer no insurance, and so you would be providing the insurance in total.

  - Consumers should not be surprised at the different directions they get from captive agents and independent agents. We talked to several captive agents who said that if any of their clients called asking about short-term rental coverage through their existing coverage, the client would be non-renewed at renewal

time. Independent agents have a little bit more leeway in counseling the client about short-term rental insurance. But what we're aware of, all short-term rental policies will be written on a surplus lines market and not the admitted market regulated by the Bureau of Insurance. To reiterate, there is no definition of *occasional* when it comes to short-term rentals and when you would be considered to be operating a business. Some insurance companies may have more latitude than others.

- Finally, there is no requirement that people or companies buy any insurance. The prudent person will. Having said that, as we found out, only 20 percent of the people in Louisiana have flood insurance. Between 15 and 20 percent of the homeowners in California have earthquake insurance. How many people in the short-term rental business have anything other than their homeowners insurance, and how many don't have a homeowners or rentals or dwelling insurance? Again, generally speaking, those who truly believe that they are commercial entities and they would like to protect their property and assets will have insurance, but there is no requirement for them to do so.

- In preparation for this presentation, we received several questions which I'd like to address. First, in a Dillon Rule state, like Virginia, there must be authorizing legislation. The introduced legislation only states that localities aren't prohibited from adopting ordinances requiring insurance coverage, but it doesn't affirmatively authorize that. I'll defer to Mr. Flynn, self-identified attorney, and Ed and others. But if the Code is amended that provides that the locality has the option to exercise the authority to do something, then it seems to me the locality could exercise their authority to do something. It would be limited authority, but they could do so.

- The other question was localities don't have authority under enabling legislation for zoning, local tax, or BPOL to regulate insurance coverage and few areas of local regulatory concern are covered within Title 55 of state code [the Code of Virginia]. What's the logical, legal source of local government authority for regulatory control mandates with respect to insurance coverage for specific uses of property?

- I would respond, while the Bureau of Insurance insurance company representative and us could be consulted in terms of what types of insurance are appropriate, in this case it's not the insurance that's being regulated, but the entity. We don't know how you would mandate the adequate coverage for the couch, apartment, home, or mansion and the disparities of each. For example, does the couch, apartment, condo, or home come with a pool? Is a meal included or not? Certainly the owners of the Comfort Inn, or the Hilton, for that matter, have different measures of adequacy of coverage than does the Barboursville Bed and Breakfast.

- What type of insurance is the General Assembly talking about? What type of liability, property, contents of the lodger, personal injury, death of the lodger,

damage by the lodgers to the homeowner's property, contents of the house? What basis, claims made or occurrence? Homeowners insurance coverage, commercial liability coverage? Can the individual who is a tenant of a dwelling unit and operating it as a limited residential lodging obtain insurance coverage for the lodging use? What would be covered by the renters insurance policy? The legislation allows renters to be operators of a limited residential lodging use.

- I would say that Joe's presentation should have addressed many of these concerns. It seems appropriate that if insurance would be mandated that it would be mandated on the liability side, protecting the consumer. That seems to be the intent of the legislation proposed last year. It would be up to the host, as it were, to decide how much of their own assets/property they would want to protect. Whether the insurance is written on an occurrence- or claims-made basis would not be material. Virtually all commercial policies these days are written on a claims-made basis.

- Is there an existing type of insurance that can be obtained by an individual homeowner or tenant for their use? If so, what is it called, how much does it cost, will it cancel out coverage under other policies? Is such insurance sold as a stand-alone policy, or is there a rider or endorsement or some other type of policy?

- I would say potentially all of the above. As we mentioned, there are some homeowner gap coverage policies that exist. You could possibly purchase a homeowner policy and a commercial policy for your rental activity. Depending on the property, a dwelling policy might be appropriate. You could get a short-term rental policy. How much does it cost? Allstate's gap coverage policy is an endorsement to the existing homeowner policy and only adds $50 to the conventional homeowners policy. I'm not aware that this endorsement, however, is available in Virginia yet. A commercial policy could easily cost into the thousands of dollars.

- Having said that, we get back to the risk. Are you ensuring a couch, room, apartment, condo, or single-family dwelling? How much of your assets do you what to protect? What's your exposure, and what's the limit of liability that you want?

- The next question was, currently if an individual homeowner has homeowners insurance or a tenant of a dwelling has renters insurance, will an insurance company cancel that policy if it finds out that the property is being hired out as limited residential lodging and not simply as someone's personal residence? It's doubtful that they can cancel a policy in midterm, but it's likely they will be non-renewed. One of my concerns is that the insurance companies really don't want to know what the consumer is doing.

- This is one of the last questions. Why can't the statute just mandate that any entity that operates a hosting platform for this type of use must provide a

minimum amount of $500,000 liability insurance coverage for such use and say exactly what type of insurance is being referred to? I would respond certainly that the statute could indeed do that, of course. In some cases, it would be way too much, and in other cases not nearly enough. Our members want to provide insurance that the customer needs and that's appropriate to their risk and tolerance for risk. Of course we would hope that the consumer short-term rental participant would act prudently.

- If the hosting platform is not involved, shouldn't government let homeowners work this out with their own insurance providers and mortgage companies and keep local governments out of it? I would say that's certainly our preference and that the consumer short-term rental hosts act prudently, recognize that they are conducting a business, and communicate with their hopefully independent insurance agent on the right amount of coverage.

- Chip Dicks did have a particular question related to the difference of dwelling policies. We'll talk to Chip specifically about that. Elizabeth, I'll send you a copy of the presentation so you can upload it.

- If there are any questions, be happy to have Joe or I answer them.

- **Peace:** Thank you, Bob and Joe. Appreciate your time. State your name, please.

- **Edward Mullen**, *Reed Smith, representing Airbnb*: Edward Mullen with Reed Smith, representing Airbnb. Thank you, Bob and Joe, for the presentation. I'd like to sort of ask a clarification question. I enjoyed very much talking with you all earlier this week and over the last couple of weeks.

  - The question regarding application of homeowners insurance to short-term rentals is not a new one. Short-term rentals have been going on for a long time. Whether or not homeowners policies do or do not and to what extent they cover those short-term rentals is not a new question. So for a long time, independent insurance agents and others have been counseling cautious homeowners who are renting out their house either at the beach all summer or on some other basis, as to whether or not their homeowners covers the activity. And if not, should they be getting a rider or a commercial policy or something like that.

  - I guess this is the question. Throughout all of that, there have been less cautious or less informed, or whatever, folks who have not counseled with their independent insurance agent and have just let it roll on their homeowners if it works and sort of take that risk. In that view, the liability policy that you all had an opportunity to investigate, you would construe that as a positive entrant to the marketplace. While independent insurance agents who don't have the ability to inspect it—and I can get into that as needed—every time might say to the very cautious person, "Well, we can't see it, so you might still want to get a commercial policy." For that other class of people who are either not cautious or

uninformed or who have been rolling dice over time, is it anything but a very positive thing in your view, having reviewed it?

- **Hudgins**: Yes, it's a positive thing, sure.

- **Bradshaw**: I think as we expressed to you, for some reason, I don't know why, Airbnb thinks that this should not be broadcast to the world. I understand the marketing issue of it, and I think other platforms could be chomping at the bit to get a copy of the policy and implement it there. I have no idea what the premium is. I would say it's not petty cash. But certainly what Airbnb provides should give consumers quite a bit of comfort. It'll give the agent a little bit of heartburn because I can't see it, but they can look at what it says on the website. One of our big primary issues is it went back and forth on whether it was secondary or primary. We looked at the policy; it's very much primary. So as long as Airbnb renews the policy on December 31st of this year, we're good to go.

- **Mullen**: All right. Thank you.

- **Bradshaw**: It does expire.

- **Mullen**: I understand. I feel confident somebody will make a good choice there.

- **Peace:** Delegate Bulova, did you have a question?

- **Delegate David Bulova**: Thank you, Mr. Chairman. I think I was able to keep up with about 75 percent of that, which is pretty good. I think you hit on a very important point which with respect to liability and protecting one's own property, then you're dealing with the risk tolerance of the actual property owner. The part that I'm most concerned about is the consumer who for whatever reason gets into a bad situation or has exposure to liability, and making sure that they're covered.

    - From the Airbnb standpoint—and again, you'll have to kind of refresh my memory on how this works. So Airbnb provides general liability coverage. At what point does that coverage not apply? Who would have to do what in order for you not to be covered by that general liability coverage from Airbnb, in which case you'd be thrown into the uncomfortable position of having to figure out where to go next where it wouldn't be seamless?

- **Bradshaw**: I'll jump in quickly and so potentially and maybe not possible, but maybe there is a gap in the Airbnb policy. We didn't see it. But if there was a gap, then I think that could be a problem. However, if it was indeed covered, then it's covered up to the limits of the Airbnb policy, which would be, what is it, a million—

- **Mulle**n: It's a million per occurrence. Ten million aggregate.

- **Hudgins**: It's like any other situation. You answer the questions, I guess, on the app when you go through Airbnb. And as long as you're not concealing anything,

committing a fraud, and answering the questions honestly, then the Airbnb policy is like any other GL policy. It has the standard exclusions that apply to those situations that any policy would. And you would have up to a one million dollar coverage per location per year.

- **Bulova**: Right. So if I can, Mr. Chairman, following up on that, I guess that's my concern. So let's say the property owner doesn't answer honestly. And so let's say the property owner is at fault in this case. Does that general liability still cover the consumer who had nothing to do with providing the wrong information to Airbnb in the first place?

- **Bradshaw**: The Airbnb policy covers that host. The person in the Airbnb, the person in the location, if they're sued for liability, then their homeowners policy would protect them.

- **Male**: You're saying that somebody who is renting a host property gets hurt.

- **Bulova**: Correct.

- **Bradshaw**: Oh, I'm sorry.

- **Bulova**: So if I'm in the host property and I get hurt, what I understand is that the Airbnb's general liability would kick in. Correct? And I guess my question on top of that, then, is, let's say that it turns out that the owner operated under false pretenses. Would that consumer still be—would that person who is using that service still be covered under the general liability, or would they not?

- **Bradshaw**: Possibly not. But that would be the case in any insurance policy for anything. That wouldn't be just an Airbnb. If you're in an automobile accident and you've lied on your application for your automobile coverage, then possibly that person you hit wouldn't have any coverage. But to answer your question, right, if the Airbnb policy does not provide coverage for whatever reason, then the renter would not have coverage.

- **Bulova**: Mr. Chairman, if I could follow up. I guess two final questions, and I'll kind of throw them out there at the same time. Are there examples where you would have something like what Airbnb is providing with a hold harmless clause for the person who's using this service? Notwithstanding whether the property owner has provided misinformation or lied on their forms, that consumer would still be covered since it wasn't their fault. Is there a model out there that would say that, yes, you can go after the property owner because you lied? But in terms of protecting the person who was injured that that policy would still apply.

- **Bradshaw**: Not that I'm aware of. Let me say this. Again, we're getting into the what-ifs and the lawyer realm. If the Airbnb policy doesn't apply, the homeowner may have concealed something from Airbnb, but they haven't concealed anything possibly from

their homeowners carrier. So if it's considered an occasional rental, the homeowners liability policy would pay for the injured tenant.

- **Bulova**: I have one last question. Let's say it did come down to litigation with respect to Airbnb's coverage liability. Where would something like that be filed? Would that be done locally? Where and how would that be vetted out?

- **Bradshaw**: It depends on the contract. I didn't see that in the contract, so I can't speak to that. Sometimes it says it'll take place in the jurisdiction where it happened. I wouldn't think it would say it's going to take place out of the country, but I don't know. That would be in the contract somewhere.

- **Mullen**: Mr. Chairman.

- **Peace**: Mr. Mullen.

- **Mullen**: Mr. Chairman, Edward Mullen with Reed Smith. The action in that case would be of the renter against the host. And they'd also be going after the policy. If the host was fraudulent and lied or something like that, that renter would be back in the same boat as a renter going through any other hosting platform or any traditional means where the homeowner has not obtained a commercial policy. Of course there's no legal requirement to obtain a commercial policy. That guest would have rights against the homeowner. Maybe he's a very wealthy homeowner; maybe he's not. But in any event, you would be back in the bucket of all the other rentals in the world that are occurring at people's homes and have for a long time.

- **Peace**: Any further questions, Delegate Bulova? Anyone else have questions? Yes, Mayor.

- **Ron Rordam**, *Virginia Municipal League*: This is Ron Rordam, Virginia Municipal League. This isn't really a question; it's more of an observation. It's a word that we keep on hearing and a definition that's really not out there—and that's *occasional*. We hear it in zoning. We hear it in taxation. We hear it in insurance. I think that's something we're going to have to grapple with, what is occasional. I just wanted to throw that out.

- **Peace**: And you're saying that just as follow-up in terms of whatever our draft may include in terms of number of days, weeks, months rented, that for purposes of insurance, that would be deemed to be occasional. Is that what you're saying?

- **Rordam**: That's it, yes. It sounds like that is very important in a lot of these different issues.

- **Peace**: Okay. Thank you. Yes, Joe.

- **Hudgins**: I need to add to that. I don't mean to be speaking for the Bureau of Insurance, but I know that the Virginia homeowners, what we refer to as—it's the

minimum standards regulation, Regulation 17. The Bureau of Insurance can't approve a change in the form if it's deemed to be more restrictive than the current form. The current form uses the word *occasional*. If you took out the word *occasional* and put *ten days* in there, they would deem that more restrictive. Because like I said, a judge in Norfolk might say twenty. A judge in Roanoke might say five. So it would take legislation to change that word.

- **Rordam**: And that was my point, follow-up. Thank you for that. I appreciate it.

- **Peace**: Mr. Terry.

- **Eric Terry**: Eric Terry with the Virginia Restaurant, Lodging & Travel Association. I have two questions. As you said earlier, Bob, you looked at Airbnb. Have you gotten any information from any of the other significant platforms like HomeAway or any of those? Have you been able to look at other ones out there?

- **Bradshaw**: My staff went online and we looked at everyone, couchpotato.com, or whatever they are, looking for anyone that provided a type of insurance. I've heard offhand that there are 300-and-something other platforms. What we were able to identify, Airbnb was the only one. That's what my staff's been able to identify. We couldn't find one that had a supplemental insurance.

- **Terry**: Okay, that's really all.

- **Peace**: Okay, thank you. I have a couple questions. Is it possible to be a host and not have homeowners insurance? In other words, when you go to register to be a host on Airbnb, do you have to state whether you have homeowners insurance?

- **Bradshaw**: That would be a question for Airbnb. You don't have to have homeowners insurance. I don't want to spread that around.

- **Peace:** Well I appreciate that. There's the sort of caveat emptor quality to all of this. I don't know the answer. That's why I'm asking.

- **Mullen**: Mr. Chairman, Edward Mullen. I don't know the answer either.

- **Peace**: Well let's get an answer to that. I think that's important. If we're trying to identify a gap, if we're trying to say where does the policy from Airbnb or any other platform that has such a policy overlay or fill in, mesh, however you want to say it, if there's nothing to mesh to, then it's only the Airbnb policy that is potential payer, essentially, in that circumstance.

- **Bradshaw**: Mr. Chairman, may I caveat and say I don't know the answer to that, and we can find it out. But in the case of the Airbnb policy, what you should really—the question is maybe for another platform, as in you don't provide anything at all. Do you require folks to have homeowners or commercial liability insurance? In this case, because it's a primary policy, it's there whether they have homeowners or not.

- **Peace**: Thinking forward, going back to the mayor's question, I think we may want to consider in terms of a draft legislation that in order to be qualified as a hosting platform that that might be a requirement. Now that wouldn't be a problem for Airbnb, but that might be an issue for these others.

- **Mulle**n: Mr. Chairman, Edward Mullen with Reed Smith. You might run into difficulty under federal law requiring a hosting platform to carry an insurance policy. The legislation that you carried allowed for localities to put an insurance requirement on hosts that could be satisfied by hosting platforms, but it was voluntary.

- **Peace:** Sure, and I appreciate that. You understand what my point is. And their point was that the way that that was drafted, maybe the localities would need to have a "may do this," as opposed to the negative inverse, which was there's nothing that prohibits you from doing that. Sterling, would that be true? Was that your interpretation of what their presentation was in terms of local government and the Dillon Rule and enabling legislation?

- **Sterling Rives**, VACO representative: Well, as with most Dillon Rule questions, the answer is—it depends. But I would read the negative implication in the legislation that went through as providing a good argument that localities have that authority.

- **Peace**: But maybe it would be clearer if stated—

- **Rives**: Oh, it could definitely be clearer.

- **Peace**: Okay. Well that's what we want to work on. That's sort of the purpose of all this, so I appreciate that.

- **Bradshaw**: Mr. Chairman, that also might be threading a particular needle. Not to cast dispersions on Chris Lago and the fine insurance companies that he represents, but the standard homeowners insurance companies don't appear to want to write short-term rental. As soon as they find out that that's what you're doing, they say we want to get off, we'll non-renew you. And then your only option is to go to the surplus lines market. And there's limited availability there. So the legislature can say here's what you need. But if it's not provided by the market, then that might be difficult.

- **Peace**: Sure. But it's something we need to consider and evaluate in the process. I thought your presentation about just the basic homeowner was a great overview. It caused me to call my agent and say what do I have. The dwelling house, the garage attached, that's sort of the baseline. They're good under their standard form policy. The personal property sort of caveats or exclusions and caps, I think that's where there was some consumer protection concerns that people may have—the $2,500 limit, the $500 limit. But there were further exclusions from that as well, which may not provide coverage. So if you have an at-home business of any kind, I think what you're saying is you need to examine your homeowners policy, potentially look at premises liability coverage, a commercial policy, or other types of gap policies. Is that an accurate statement? You would recommend doing that? Any at-home business?

- **Bradshaw**: And seeing your independent insurance agent.

- **Peace**: Sure.

- **Bradshaw**: Absolutely. A homeowners policy was never designed to cover a business.

- **Peace**: Right, right. Yes, Mr. Terry.

- **Terry**: Eric Terry. What about if someone is not a homeowner, but actually has a renters policy or—

- **Bradshaw**: It's the same thing. The policy I described covers the HO3, which is if you live there. It covers the renters policy. It's the same for the condo policy. So all of the generic homeowners, the same thing.

- **Terry**: But you would get those specifically for them.

- **Peace**: I don't know what the short-term policy is that you refer to that's currently in the market that's not an Airbnb product, but I'm familiar with rental insurance as a former renter. Is there such a thing as renters insurance that's portable? In other words, that presupposes you're renting in a particular space that's fixed, not renting in the short-term manner. In other words, if that covers me, my personal property, those things, it's not portable. It's affixed to that particular rental unit. Is there such a thing in the market, contemplate that?

- **Bradshaw**: There is, but it hasn't been sold for about thirty years. It's called the personal property floater and personal articles floater and a CPL policy. Back before homeowners coverage, it took six policies to cover what the homeowner policy covers. That's basically what you have.

- **Peace**: That's interesting. So if I'm traveling the world and staying in a lot of these short-term places, you're telling me that I might be able to procure a policy that would cover me in those endeavors and experiences.

- **Bradshaw**: If you could roll back thirty years. There are probably not any companies now that even know how to do that.

- **Peace**: But it's an interesting concept, at least to me. I may be the only one that finds it interesting.

    - In terms of what I think the delegate was asking about and not getting into sort of civil procedure and diversity citizenship and a mountain of controversy and whether we're in state or federal court or all these things—because we'll likely have the circumstance where there's someone from New York and someone from Virginia, and something happens that's more than the seventy-five thousand dollars or whatever it is. There's basic common law that I would imagine that you would still be able to claim. If there's a duty and you breach the duty, there

are damages, it's really a matter of whether you can have the insurance cover and pay as opposed to just being personally liable. And if that owner of that residence has the ability to pay, then basically you get a judgment and an award that can't be satisfied. Is that your understanding too? In the absence of anything else, there is the common law?

- **Bradshaw**: Yes. That would even happen when you exhaust the limits of your insurance.

- **Peace**: That's a good point.

- **Bradshaw**: So at some point, depending on the horrendous accident, you could go through the Airbnb policy, the homeowner policy, your umbrella policy, and then, congratulations, your paycheck.

- **Peace**: Right.

- **Amy Hager**, *Bed & Breakfast Association of Virginia*: I have one quick question. I'm so sorry. I just want to make sure that it's clear. The only policy out there that would cover the traveling public, I guess kind of to follow up what you were asking, is a true commercial liability policy, if that's what the homeowner chose to get. Right?

- **Bradshaw**: That would certainly be the optimal thing is if you're getting into this business, talk to your agent about getting a commercial policy. Again, if you're going to rent your home out, and let's say you do that—I'm just going to go out there and say three times a year—that's definitely in my opinion within the realm of occasional. So you absolutely would have liability coverage if the person you rented to was harmed and you were negligent. Because, remember, it's a liability policy, and it only pays if the judge bangs the gavel and says you're liable. But if you do it on more than an occasional basis, whatever that may be, then you're correct, you need a commercial policy.

- **Male**: Similar to what you were saying—I've stayed in a lot of B&Bs. I prefer that. And very often you'd find the owners living in a separate property like behind the B&B. I think that would have to have a commercial policy because it's not a premises insurance. The homeowners insurance would not then cover that B&B, if I'm correct.

- **Hager**: That kind of leads into my next question, actually. What if you're a renter, so I'm renting a house. I have renters insurance, and the owner obviously has whatever landlord insurance they have to have. If I'm a renter, and then I decide to rent out that property on Airbnb, would any of those insurances cover that situation?

- **Bradshaw**: Your renters policy is a homeowners policy. And you would have the same liability coverage as if you owned that house.

- **Price:** And to your point, that's a point well made and had been contemplated during the session in terms of the ability to sublet and those issues. Thank you for asking. That was Amy Hager from B&B Association.

    - I think it would be helpful, and maybe this would be just like one page that you could again provide. I hate to give you more work. But with collaboration with maybe Erica and Amy, there's obviously a lot of interest in the consumer protection piece of the renter of that site. I would like to know what the coverages, caps, limits are of the hotel and the guests of the hotel and the B&B as well, comparing apples to apples or apples to oranges. I know there's been a lot of talk about we should treat Airbnb or the industry itself the same as hotels. I know that comment has been made. So I would just be curious in terms of insurance, how we would sort of look at those things.

- **Bradshaw**: Aren't hotels limited by legislation?

- **Peace**: My understanding is it is. But I think it would be good to just have like a rundown so everybody's on the same page as we're looking at those who are consumers of lodging in the various forms and what their expectations may be.

- **Bradshaw:** I would think that the hotel liability would be considerably less than what Airbnb supplies.

- **Peace:** I don't want to speculate, so I'm just asking if you could put a little cheat sheet together. That would be very helpful.

- **Mullen**: Mr. Chairman, Edward Mullen. One clarification on Ms. Hager's first question. I think the question was, absent going through Airbnb with the policy that we've been talking about, in other situations the only way to be sure would be a commercial policy. Is that an accurate reflection of the question?

- **Hager**: Yes. So are you guys covering anything for the guest in this aspect?

- **Mullen**: I think there are incidental guest protections. But the guest's real protection is the liability policy as against the host or the homeowner. And again, I guess that's the root of the Chairman's question on the statutory limitations for hotel liability for guest items and things like that, which is stated in statute.

- **Peace**: Thank you very much for the presentation. I appreciate all the questions and indulgences.

III. Bed & Breakfast Impacts

- **Peace**: The next item on our agenda is the bed and breakfast impact of this emerging industry. Misty Williams, who is with L&L Hospitality Group: Inns of Distinction, is here. Thank you for coming. Appreciate you sharing some of your perspectives with this workgroup.

- **Misty Williams**, *L&L Hospitality Group: Inns of Distinction*: Thank you for the introduction. I am Misty Williams. I work with L&L Hospitality Group. We are a small corporation based in Woodbridge, Virginia. The owners have five properties. One is in Florida, but the other four are in the state of Virginia. Here is our property. We have two in downtown Fredericksburg—the 1890 Caroline House and the Richard Johnston Inn. We also have the Ashby Inn and Restaurant. That's in Fauquier County in Paris, Virginia. The newest property is the Inn at Evergreen. It's on the Evergreen Country Club in Haymarket, Virginia. Those are our four properties here in the state of Virginia.

    - They went into business purchasing properties in the late '80s. This is when they first started acquiring B&Bs. They also own other businesses, but this is kind of their little hospitality branch.

    - So just a little bit about me. I was hired in 2013 to help them out with their property, so I work directly for the owners of the properties. They don't live onsite of any of their properties. Each property has their own either general manager or on-site innkeeper that either lives there or lives off property. I am in kind of charge of making sure all the properties are up to legal business standard codes, so ABC laws, insurance, inspections, making sure that we're renewing everything annually or biannually, whenever those renewals come up. I also help with budgeting, updating the websites, ensuring that all the staff on the properties have the licenses that they need, so food handler certifications. I'm also the treasurer of the StayVA organization here, the Bed and Breakfast Association of Virginia.

    - So you can see that 1984 is when they started looking at the properties and purchasing them. And then it gives a little bit about the StayVA. And we also started in 1984. I think that's when a lot of the B&Bs actually started in Fauquier and Loudoun County. We have some that have been around for about thirty years now. You can see that we do have about 450 legal bed and breakfast/inns in the state of Virginia, with an addition of cabins, cottages, farm stays. So it's definitely a growing industry. There are a lot of different aspects to the small lodging industry.

    - One of the things that makes us a little different from the Airbnb is we ensure that all of our zoning is up-to-date, that we are a legitimate business. We want to make sure that our guests are covered if there are any injuries. So it's not just for the owner. They want to make sure their properties are covered if it was to burn down. But they also want to make sure that they're doing everything legally—filing their taxes, making sure that we have all the occupancies correct. So if a fire marshal did show up, we wouldn't get shut down and that if there were any injuries, we were acting within the laws.

    - You can see we also do provide workmen's comp for any of our staff on the property. All of our properties maintain all the normal insurances, the health

inspections are up-to-date. We pay all of our state and local taxes as needed. We all do have business licenses.

- This goes into a little bit more of the ABC licensing. One of our properties is a full-service restaurant, so we have an on-site and off-site alcohol license. That's a little bit different than for B&Bs. For a bed and breakfast in Virginia, it's only a $35 license annually to have your ABC license. And that allows you to serve beer, liquor, wine, or mixed drinks to your guests on your property, in their rooms, on your terrace—whatever is your actual property.

- One of the organizations that we are a member of is Select Registry. With that, one of the things that they require from us is to have all the licensing that's required by the state that we're in to be part of the Select Registry. They do their annual inspections of the properties. Those are some of the things that they request. Also, the BBAV. To become a member, they request proof of your licensing, proof that you have insurance.

- We do have occupancy limits in place. We know that we can't do a wedding of over a hundred people due to fire codes. We don't run into the issue of there being 150 people on the property, and something gets called in, people get injured. We stay within those regulations.

- As far as VDOT codes and everything, we do have signs on the main streets for some of our properties, especially in Fauquier County because it is in a very remote area of Virginia. That's something that we pay for annually. They're very good about wanting money, so they always send us the forms. We just have to renew it and make sure that the signs are still easy to read and that they haven't fallen down or anything of that nature.

- As far as the winery insurance events and farms, we have an on-site organic farm at our one property. So we're actually going through the process of getting it coded as organic. It takes about five years, so that's something that we've been working on. That's another interesting aspect of just trying to make it legal and being able to actually call it organic.

- Again with the licenses, we make sure that all of our properties have all the licenses that they need. The inspections. As far as insurance and things, it depends on if anything changes drastically in our building. If we do any building updates, if we overhaul the property, or if anything changes with insurance requirements, we would actually have people come and investigate the property. Our biggest concern is our property in Paris, Virginia, because we're so remote there's no fire department within thirty minutes. There's no large body of water. So we have to make sure we're really covered with our fire insurance on that.

- All of our properties have to have a food handling license because every property does fix breakfast for the guests that stay. You can see a little bit of the information, too. Starting in July 2018, there are some changes that are going to

be happening with that. Five rooms or less, if you don't want to be inspected by the health inspector, you have to advertise that you're not inspected, that you're an uncertified kitchen. Being a food handler, it's actually a pretty easy process depending on what level you need. You can go online. Thirty-five dollars. It's good for a couple of years. If you need different levels, it can range up to $200. Again, that's good for usually two to five years depending on what food handling class you've taken.

- For our properties, it's really nice because everyone uses the exact same reservation system. So it's easy for us to account for taxes, payments, make sure we're getting everything in on time as far as our state and local taxes. The guests can book online; they can call us and book over the phone. We also use OTAs and GDS, so online travel agents, Travelocity, Expedia. We use bedandbreakfast.com. It actually helps funnel all of our reservations for us. So we're getting payments in directly from them into our banking account, and then they notify us when the payments come through. Any guest who books over the phone, it goes right through our reservation system as well. So it's all in one space. We take credit cards, cash, checks. And it's kind of funny that we still take checks. Some people will mail it to you.

- Because we're a small corporation, all of our taxes are paid monthly via our accounting department. That's something I don't have to deal with, which is nice. I just make sure that all the software is up and running. They actually submit the state and local taxes. They also help with any bills. A lot of the bills go directly through them. So I approve everything and send it to our Accounts Payable Department, and they pay all the bills for us there.

- Some of our advertising venues, like I said, we do have OTAs for all of our properties. I don't necessarily say these are the best ones, but these are just some examples. Bedandbreakfast.com is one of our largest ones. We used to advertise on I Love Inns. That seems to be a little bit of an older avenue, but that still is out there. We are listed on Airbnb as well. All of our properties do have at least one room listed on Airbnb because it is a free listing. We do use that.

- We have had a nightmare with Airbnb, so we try not to really promote that as much. We had a guest stay with us who ended up breaking a window, destroying property. The owners tried to file a claim through the insurance, and felt that it was too much of a hassle, and ended up just paying for the problem themselves. We just asked that guest to not come back and stay at our properties. So we list there, but we haven't had good luck with them.

- Of course all of these other avenues for advertising do take a commission. We would love our guests to call us directly, book on our website so we're not paying the 20 percent commission.

- Some of the other associations that we're a member of, so the StayVA, Select Registry, the AIHP. I think that's the website for the independent-

innkeeping.org. That's the newest bed and breakfast association. Of course everyone's on Facebook, Instagram, Pinterest, Google. People always want to see your pictures, your recipes, your weddings, what you're doing. And then Virginia.org is a really good site for us, as well as Fredericksburg, Visit Fred. That's one of our best websites in the Fredericksburg area for those properties.

    - That's kind of it.

- **Peace**: Thank you very much for your presentation.

- **Williams**: You're welcome.

- **Peace**: I'll say I've eaten at the restaurant at the Ashby Inn and recommend it highly to anybody.

- **Williams**: Good, good. Thank you.

- **Peace**: Much like I recommend the Jefferson Hotel here in Richmond to anyone.

- **Williams**: Our last chef actually works in Richmond at the Quirk Hotel.

- **Peace**: That's a great place, too.

- **Williams**: Yes, it is.

- **Peace**: It's an abundance of riches. Are there any questions of our presenter? Delegate Bulova?

- **Bulova:** Thank you, Mr. Chairman. Just out of curiosity, because we had just leapt from the insurance issue to bed and breakfasts. Do you know any of the ins and outs about why it was so complicated to go through Airbnb's insurance and why they decided to suck it up and do it themselves?

- **Williams**: Well, the owners are in their 80s. And so going online, filling out forms—they're more of a face-to-face type people, so they felt that it was just easier. Their properties are already insured on their own, so they just felt like the damage that was done was less than X dollars, so it was easier for them to just handle it themselves and ask the guest to just not come back. If the property had been burned down or if it was thousands and thousands of dollars, they probably would have taken the time to go through the process. But to them, they just felt it was easier to replace the window and drapes.

- **Bulova**: Understood. So there wasn't any particular roadblock other than just a little bit of time.

    - The second question—and this has nothing to do with insurance. It deals with some of the earlier interplay we had with a state oversight versus local oversight. For a bed and breakfast, obviously they are regulated at the state level. And just

like we're proposing for Airbnb, localities can regulate for zoning and if you don't cut your grass and all that. What kind of access do the localities have with respect to state records on bed and breakfasts? Is that pretty open so that any locality that was interested in enforcement issues or thought somebody might be violating the policies of state regulations, could they go to the state and just have open access to that information, or is there also some privacy with respect to that, like what we're proposing for Airbnb?

- **Williams:** You know, I'm not a hundred percent sure on that. I know if someone has a complaint with the business that they can go to the county. And then if the county can't help them, if they think they're in violation of a noise violation or how many occupancies that we have. If we have over a hundred a people on the property, I know they call the cops and report our properties. But as far as if they want to go and investigate what kind of licensing we have…? We have all of our licenses displayed. All the occupancy and things of that nature are displayed in our properties. So if someone saw it and then felt like we were going against that, I'm sure they could run it up the chain, but I don't know how easily. They could go to their state representative and ask for this information.

- **Hager:** I can help answer that. Amy, from the Bed & Breakfast Association of Virginia. Since I'm the one that verifies every 142 properties' businesses licenses, you can go online and look them up. You just look up the name. It tells you if they've actually filed and paid for their license. That way you can get their address and contact information right there. I think it's Virginia SCC. Right? So it's pretty easy. State Corporation Commission. It's very transparent, to the point that the address, the name that's on the license. The license number as well is there. A lot of my innkeepers, sometimes when they first start out, they have this pile of paperwork. They're like, I'm not for sure what my number is. So I can actually go pull it up for them and give it to them. They appreciate that.

- **Peace:** Good. Mr. Terry, you wanted to add something?

- **Terry:** Delegate Bulova, just to kind of add a little more color to that. Hotels, when we submit our tax requirements, when we file our occupancy taxes, we submit detailed information on who occupied the room and what they paid and all those sort of things. So the hotels are required to submit a pretty detailed bit of information there.

- **Peace:** I had a couple of brief questions. Is there an owner/occupancy requirement to the B&B?

- **Williams:** In the state of Virginia, they don't require that the owner live on the property.

- **Peace:** And your owners are in Florida. Is that right?

- **Williams:** They're in Woodbridge, Virginia.

- **Peace:** Oh, they're in Woodbridge. Okay. I thought I saw something about Florida.

- **Williams:** They do own a property in Florida as well.

- **Peace:** Oh, okay. How many days a year do you hold your properties open for overnight guests?

- **Williams:** Three hundred sixty-five days a year.

- **Peace:** How many people do you employ to manage all these properties?

- **Williams:** With all the different properties, I would say we're less than a hundred. I would say between the 50 and 100 range. It just depends on the time of the year. We have a country club that's looped into hospitality. There is a bed and breakfast on that property as well. Including all the staff it gets a little bit larger, depending on the time of the year.

- **Peace:** So to the layperson, you run your lodging establishments closer to a hotel than a homeowner would be operating on an Airbnb for three nights a year, right?

- **Williams:** Correct.

- **Peace:** Okay. Thank you.

- **Williams:** We're open seven days a week at all the properties.

- **Peace:** Thank you very much. Are there any other questions? Ms. Ragon.

- **Maggie Ragon**, *Commissioners of Revenue Association***:** I'm not sure why we got to share a microphone today. I was trying to figure out which one of us was supposed to be using it or not. Just to answer your question. In terms of localities' access to information through state databases, as commissioners of revenue, we have access to all of the databases that the state uses in terms of taxation, in terms of registration, and also for income tax, for licensing, for LLCs, for the Health Department, DPOR. All of those databases are available to us. So the localities would have the information.

- **Peace:** Thank you very much. Misty Williams, thank you very much for your presentation. Maggie Ragon was the last questioner.

IV. Northern Virginia / Impacts of Short-Term Rentals

- **Peace:** Northern Virginia, Impacts of Short-Term Rentals. I know that at the end of the last meeting, we had a number of people in public comment offer their particular concerns. Many of them, if not all of them, were from what might be defined as Northern Virginia. I think representatives of a couple of the localities said that they would be looking into how they could address some of those concerns. I'm not sure if that has been able to happen yet, but I'm sure it's at least started. We do have Beth

Erickson here again from Visit Loudoun, who gave a very impassioned presentation previously. It was well received. We appreciate you coming back.

- **Beth Erickson**, *President & CEO of Visit Loudoun*: Thank you. It is my pleasure. I will tell you that I am wearing several hats today. In addition to being president and CEO of Visit Loudoun, which is Loudoun County's designated convention and visitors bureau, I am also the president of the Northern Virginia Visitors Consortium, which is comprised of Prince William, Fairfax, Loudoun, Arlington, and Alexandria. So I have conferred with my colleagues on this presentation. The third hat that I will say that I am wearing is that I have been asked to present today to you on behalf of Loudoun County by our county administrator, and have worked with county staff on my presentation as well. So hopefully I have my bases well covered. And I am very pleased to be with you again today.

    - I'll add just a brief moment of context. As you know, because you have heard, Airbnb was launched in 2008. Since then, it has grown to two million listings. This eclipses Marriot International, Intercontinental Hotel, and Hilton Worldwide combined. They have a valuation of $24 billion. If you have not seen it, it's one of the reasons that I included it in my presentation. It's a little bit soft right there. Penn State just issued a really terrific synopsis and study of the sharing economy, and that's where I'm going to be pulling some of my information as we go forward today.

- **Peace:** Just so everyone recalls from the first meeting—sorry to interrupt—that hotel-sponsored white paper was distributed at the very first meeting. So people have had a chance to read that. Thank you.

- **Erickson:** And I will say that one of the reasons that Penn State was selected is that they have a School of Hospitality, as does Virginia Tech. So it is again one of our stalwart, along with Cornell University, one of our stalwart hospitality industry training grounds, if you will.

    - So I want to talk a little bit about what is a typical Airbnb host. I will tell you that I have researched extensively in Loudoun County, and I'm going to give you three very quick case studies to let you meet some of those in Loudoun County that are indeed Airbnb hosts.

    - The typical Airbnb host, as was stated in the Penn State study, earns about $5,000 a year, shares less than four nights per month. So I think that fits within [the word] *occasional.* And it fits very closely to what was some of the discussion in our last presentation that we heard in the last session, which is when you look at it from an IRS standpoint, someone can use their dwelling unit as a personal residence and rent it out for fewer than fifteen days and not report the rental income. On the sixteenth day, it becomes a rental property.

    - So I think that this is probably what Airbnb intended when it launched. I will tell you that I had a great opportunity to take a look at this couple. They're from

Sterling. As you can see, they rent one private room there at $40 a night. Their reviews are lovely. People enjoy them. They are well engaged. They answer back to any of the reviews. They would fall within that category again of the occasional renter.

- As we look at by the numbers, I'm just going to go through very quickly in putting this further into context. Loudoun County has 37 hotels and resorts, everything from extended stays all the way up through a five-star luxury resort. We have approximately 5,700 sleeping rooms. We have 25 B&Bs, which would represent 127 sleeping rooms. And I will tell you how much I would love to have Ashby Inn in Loudoun Country, if we could somehow make that come over just a little bit over the border.

- But I will say Misty brings up something that's very interesting about Loudoun County. For those of you who know my county well, it is divided. You have a very eastern, more of an urban feel. And then you have a rural feel in the back part. So when we're talking about those 127 B&B rooms, the majority of those are in our rural areas.

- Airbnb, I pulled this information on July 11th, and I had a wonderful intern from Virginia Tech who was able to sit there and count every single bedroom that was listed that day on Airbnb. So on that day, we had 473 residential units, which equated to 919 sleeping rooms. Let me point out two things on that. Those 919 sleeping rooms eclipses by seven times the number of traditional B&B rooms we have. When you take a look at it, it is more than 16 percent of our hotel inventory, which is untaxed and unregulated. That is why the Northern Virginia Visitors Consortium and the county sent me down.

- I shared this with you last time, and I'm just going to touch on it very, very briefly because you have it in your notes. What's interesting, I know that Mr. Bradshaw was saying that insurance will put people to sleep. I think data in my matrices could easily put people to sleep. So that's not my intention. My intention is to point out again that data is the new oil. It is the most important asset that we have.

- When I can take a look and go straight across the top, I know how many rooms I have in inventory. I know what my average daily rate is. I know what my occupancy is. At this point when I pulled this—May of this year—my occupancy was at 68 percent throughout the county. I know what my direct revenue projections are based on occupancy and rate. I know my VDOT portion of TOT is, which is two percent, which I mentioned to you last time. There are certain municipalities in Virginia that pay those two percent taxes. Loudoun County is one of them. It goes directly to road improvements in the Northern Virginia area. The other aspect is the five percent TOT projection. This is the information that I use every single year in helping to inform my county's budget. TOT goes to support schools, it goes to support infrastructure. It is a very important aspect of our infrastructure.

- The bottom I'm going to go through very quickly. Again, it was July 11th when I was able to pull this information. What's in white I was able to find online. So I was able to tell how many rooms were in inventory. I was actually able to go through the average daily rate, because they have information through Airdna. You'll see on the bottom. That was my source. But from there, in all honesty, these are my projections. Why? Because everything in gray is not reported. It is not transparent to us. It's not transparent to our municipalities. We don't know what the occupancy is. We can't help with what direct revenue projections would be. And I can tell you that through my algebraic equations, which was enjoyable, I was able to go through and talk about the fact that by not taxing, not being able to really drive this home, we are leaving nearly a million dollars of TOT revenue on the table and about $372,000 for road improvements.

- I'm going to continue on with that, and I'm going to continue to talk a little bit about short-term rentals in Loudoun County. I would encourage all of us to go and take a look at Airbnb because it's actually a very useable website, very user-friendly. You can find the information that on this day when I pulled the information, which was yesterday, we had rooms that were going for $10—which again is a shared room, probably a couch or something like that—up to $1,000 a night. Our average rate that day, on that moment when I pulled it, was $197. So you have an idea of being able to take a look at a couple of them.

- I pulled the map on the right—again, this is a direct screenshot—to kind of tell you a little bit about when you look at Loudoun County where you're seeing those Airbnb units. They are distributed throughout the entire county.

- My second case study that I'm going to bring forward to you is a site at 20549 Grant Court, Sterling, Virginia. This is the portion of my presentation that I received the most information from my county. When we take a look at what is happening here—I pulled this up because on the map you're going to see there are some gray dots and some red dots because the gray dots were I clicked on things to take a look at them. But what you're going to see is that this is a heavily residential area. Right where you see Potomac Falls, there is a hotel right there, so this is a serviced area. We have hotels on Route 28. We have hotels on Route 7. Again, this is in the Sterling area. For those of you who know her, this is in Supervisor Volpe's district. That's how I also became very involved in this topic.

- At this site in August—this is one of the reasons that I pulled this—there was a report made to the Loudoun County Sheriff's Office. I'm going to go ahead and let you read through this at your discretion, at your leisure, but I'm going to pull out a couple of highlights.

- There were four males that this was rented to that were in town for a construction project. The sheriff received multiple calls starting in early August stating that there were issues with loud noise, off-colored language. They were just creating a public nuisance. They reached out to the Loudoun County sheriff, who in turn triggered Loudoun County zoning to come onboard. I will tell you from the last

time that I was here and the Airbnb representative who talked, talked about self-policing, and talked about Airbnb bringing down different types of renters. I will tell you that the property owner took that step to move forward and removed themselves from Airbnb. The reason that we know this is that not only did they tell us, but the blue arrow shows you the pinpoint that says that that is no longer an Airbnb site. Again, this could be an instance that this was somebody who was occasionally trying it out, found that it did not fit for what they wanted to do, and withdrew the listing.

- But I'm not here today to talk to you about really, truly those types of instances. What I do want to talk to you about are full-time operators. These to me are the top three findings that are key to me and that are important to us. The Washington, D.C., market, of which the Northern Virginia Visitors Consortium is the Washington, D.C., market, ranks only third behind Miami and Los Angeles for multiple units on Airbnb. Again, it's not that nice couple in Sterling who's using their spare bedroom because their children have all gone to college. These are people who have entered a business arrangement. Nearly 30 percent of Airbnb's revenue came from full-time operators. Full-time operators earned about $140,000 in revenue. Again, this is from the Penn State study.

- The last bullet point when we're talking about those operators that rent out two or more residential properties on Airbnb, while they account for 17 percent of the hosts, they are 40 percent of the revenue. This again is big business.

- As we talked about in the very beginning, there were some that were $10 a night, some that were $1,000 a night. So this is my third case study very quickly. This is one of those I wanted to go online to see what I had in my county that was renting for $1,000 a night.

- The listing is called Charming Estate, and it is listing for $800 a night, and it is in the Middleburg area. When you go on and you click through on Charming Estate, looking at the Airbnb listing, I'm able to pull some very interesting and very compelling information. The light blue arrow at the top does say that that's $800 a night. If you go through and read through the house rules, it tells you that there is a two-night minimum. So I can only book that for two nights. It also tells me that it holds up to sixteen guests, which is a bit of a challenge because our zoning ordinances say that no more than four unrelated adults or family members plus two renters can occupy a structure at any time. So already they are not within compliance on zoning.

- Next is I wanted to learn a little bit about Sabrina. Sabrina is the host, and she had wonderful, wonderful reviews, just as the couple did in Sterling. Let me walk you through very quickly what I was able to learn about Sabrina just on this screen. She is from Berryville, Virginia. Berryville is not in Loudoun County. Berryville is not Middleburg. This is not her home; she lives somewhere else. She has seventy-five reviews, and she has been in business since 2014. Seventy-five reviews tell me that at least seventy-five parties have taken the time to write

a review. It has been occupied at least seventy-five times for a two-night minimum. Again, this is not occasional use. These are those that are multiple property owners and business people.

- So the other thing I was able to learn about Sabrina is she's also listing over on the far right another property called Clifton. So Sabrina is listing multiple properties. This is what I'm here to talk to you about today and where we have our greatest concerns.

- Interestingly, I did take this forward a little bit to walk through the process. If Sabrina has rented this out—because again, she has 75 reviews, so I'm saying 75 times rented, two-night minimum—I'm looking at 150 nights at $800 a night. She's generating about $120,000 in income. That fits pretty closely and pretty well with what we learned in the Penn State study. If you were to take that and you look at whether or not taxes were paid on that at five percent, $6,000 in TOT taxes not paid for one property. And its $2,400 on the two percent not paid to help with infrastructure and transportation in Northern Virginia.

- I wanted to go through one more step to see how could Sabrina post taxes. How would she, if she wanted to, remit taxes? How would she go about doing that? Again, this is from Airbnb, what does a host do to remit taxes? If you determine that you need to collect tax, this is how you can do it. You can do it by looking at it to say that you can put it under a special offer. You can ask your guest to pay it in person, which is really not realistic. Or you can choose to collect the tax outside your listing. Again, this is somebody who is operating as a business, and a profitable business, that is not being held to the same standards as other businesses.

- Interestingly, Mr. Bradshaw had made a very important point talking about insurance that we need to recognize that they are conducting a business. They need to carry a commercial license—not a commercial license, commercial insurance. Certainly Mr. Bradshaw and his colleague know that far more than I do in terms of the intricacies of insurance law. But I will also say that Delegate Peace, you brought up also a very interesting point when you said any at-home business. And I will tell you that I was a consultant working out of my home for ten years. I had a license. I paid my taxes. I was transparent. And I was visible to my county.

- So when we're talking about Airbnb and we're talking about short-term rental—and I think we're already hearing that Airbnb is coming forward and being a good citizen at least in looking at carrying the liability process. We need these folks and these operators to register as businesses and adhere to local zoning and all other regulations. I'll be honest with you. I can't speak for that couple in Sterling, but I will guarantee you that if you tell them that that's what they needed to do, they would have registered, they would have paid their taxes, and they would have been transparent.

- They need to be required to report industry data. And that is not only to the locality, but that's also to the Commonwealth. They need to be taxed like hotel rooms because they are getting the benefit of acting as a hotel room or a B&B without having to pay. Localities need to have transparency regarding the identities of short-term rental providers. That issue that I told you about earlier with Grant Court, there was a lot of consternation back and forth trying to figure out what they were dealing with because they were not able to reach the homeowner.

- I think this is a pivotal time in the discussion, so I so thank you for allowing me to come back and talk to you a little bit about our perspective from Northern Virginia. I think that the time is absolutely right to get this right. I am available for any questions. And if there's anything else I can add to the discussion, it would be my pleasure.

- **Peace:** Thank you very much. Are there any questions or comments? Mr. Mullen.

- **Mullen:** I'll defer to Senator Barker.

- **Peace:** I'm sorry; I didn't see you. I apologize.

- **Senator George Barker:** Representing three of those five Northern Virginia areas in my district, I have particular interest, even though Loudoun is not one of them. To what extent is there an option for the jurisdictions to go after the owners of these to collect the five plus two percent on the taxes now? Are they in any way prohibited or are they empowered to be able to collect those taxes?

- **Erickson:** From what I understand from Loudoun County, because we have discussed this, they are not licensed businesses. So you would need to have the ability to have somebody going through and auditing and knocking on the door and speaking to them. But at this point, that's all we have because they are not required to pay taxes.

- **Peace:** Did you have a follow-up?

- **Barker:** Yes. I understand that these places by and large, if not all, do not seek licenses now to be able to provide that service, so they're not trying to get licensed as a bed and breakfast or a hotel or some other type of entity. But are the jurisdictions prohibited from doing that, knocking on the door and saying you owe us taxes because you're operating something that qualifies under the county ordinances and the state law?

- **Erickson:** Senator Barker, I honestly do not know the answer to that. But I will tell you that one barrier to doing so is that addresses are not listed unless you are booking. So to go through and be able to pull that information right off the website is not easy to do.

- **Peace:** Mr. Flynn and Mr. Rives represent our local government and the mayor. Would you like to take a stab at that?

- **Rives:** Yes. We'd actually looked at that before in working with the commissioners on going from house to house using the platform to find properties. What is it, the juice wasn't worth the squeeze on an individual property was the problem. If somebody really is just renting a residential dwelling unit out a few times, the cost to the commissioner of the revenue or other finance officer to do the work for that just wasn't worth it. The property you had at $800 a day with a two-day minimum, that's a different animal, of course. And that's probably sort of the exception to what universe we're talking about here. But that was the problem we ran into, the practical side of it. I'm looking at Charlie back here from the commissioners. And as was identified just a few minutes ago, the problem is that until you're actually booking the room itself, you don't really know the address. You could get a field inspector to perhaps get an idea of what it looks like from looking at the pictures on the website and maybe finding it, but that's not a very good way to do your business.

- **Erickson:** And if I may add to that. I think one of the challenges is when we took a look at a few slides earlier; $197 was the average daily rate for Airbnb in Loudoun County. Our per diem currently is $97. So this is not an insignificant amount of funding.

- **Peace:** Mr. Mullen.

- **Mullen:** Thank you, Mr. Chairman. Edward Mullen with Reed Smith, representing Airbnb. In answer to the senator's question, the answer really is, yes, tax is owed, and, no, there is nothing keeping the locality—other than logistical difficulties—from collecting. There's no legal impediment to collecting it. The impediment is a logistical one.

    - And, candidly, that logistical impediment was a big reason why we brought forward a bill this year to allow the hosting platform to collect and remit at the state level. As we talked about before, there are logistical impediments on the hosting platform side for doing it at the local level, locality by locality, and subjecting themselves to audits at every locality around the state. The solution offered was to help localities with that logistical hurdle, which is no doubt difficult and which is no doubt why they have not been collecting these to date. There's no doubt that it's owed, and there's no doubt that they have the ability to do it and, furthermore, to enforce regulations that they put on the books as prohibitions or whatever else.

    - One notable thing on the presentation with some of those properties that were noted is that primary residences were all that was implicated by the legislation this past year. Secondary properties were not. So that's one note.

    - Second note, on the business license front, there was a bright-line business license provision in the bill to be a bright line. However, there is an existing

exemption on the business license side for people renting their houses out—or renting their primary residences out. It's § 58.1-3703 C 7. So just as a point of reference, that's not a requirement for primary resident type situations.

- **Peace:** I think further for uniformity statewide. I think that's what our goal is here. There are localities that don't have a BPOL. I appreciate Loudoun probably does when you referenced having your license. You might not have that in Hanover, for example. Yes, Mr. Mayor.

- **Rordam:** Mr. Chairman, Ron Rordam, Blacksburg. I just have one question on the whole discussion of registration and knocking on doors. Maybe Sterling and Mark can help me with this because as I always say in Blacksburg, I'm not an attorney and don't pretend to be one. That exemption of rental property, am I wrong that that really is just a rental of real estate, it's not like a hotel run like we're talking about here for short term. Am I right on that?

- **Peace:** Mark Flynn.

- **Mark Flynn**, *Gubnatorial Appointee VHC*: That's right. The rental industry, the apartments and all that, that's when it's usually more than thirty days. I think there's one ninety-day in Virginia Beach. But the short-term does not fall into the exclusion from a business license.

- **Rordam:** Just as a follow-up, I think the whole idea of registration, if we know where one of these properties is, that makes it much easier. If they're going through Airbnb, if they have that general part on their form, we can do it. But that would help localities in that if the registration was required. So I think to answer your question, that registration would help a great deal.

- **Erickson:** And if I may build on that. I think one of the issues under registration, the next step is understanding the data. It's one thing to have a property that is registered. It's another to know how many times that was occupied and at what rate. That's how you are able to bring the discussion of taxes into parity. If I were to knock on your door and say you are listed as an Airbnb, I don't know how many times you have rented your property, and I don't know at what rate. So it's very hard for me to collect those taxes. So when it gets down to things that are not worth the squeeze, again I will say we're talking about an area that is gray, and we don't know how juicy that orange is. But at $197 a night as an average rate, 900 rooms in inventory, that's a pretty good orange.

- **Peace:** I appreciate it. As a member of the Appropriations Committee with a $1.5 billion shortfall, I would love to know how much tax we would have collected since July 1st had we passed the bill. That would have helped those state employees get pay raises.

    - I know Mark Haskins spent a lot of time trying to define a central mechanism that would make it easier for all localities. Normally, we're telling you what to

do and not giving you any help to do it. This is the funded mandate, I suppose, because we'll be giving you the money if we adopt that mechanism.

- Are there further questions or comments? Yes, Delegate Bulova.

- **Bulova:** Thank you very much, Mr. Chairman. I want to make sure we don't lose sight of the fact that there are kind of two issues with respect to local enforcement. There's the TOT issue. And, quite frankly, from my constituents, the ones they're most concerned about are the quality of life and not commercializing residential areas.

  - I think my question is specifically for Edward. We have several different ways we can engage an enforcement. You have localities, you have the state. And then of course the way that we've set up the draft legislation last year, we kind of rely on Airbnb to do that internally. So clearly Sabrina is potentially breaking the rules. And under the draft statute, she would definitely be breaking the rules. What would happen if a locality went ahead and reported that to you? Let's say every locality was smart enough to hire a summer intern to go through and do that kind of work? Even though that's a little bit of torture, that's what interns are for, right? If a locality reported this to you, what would the consequences be for Sabrina? Would you take her off the platform or how would that work?

- **Mullen:** Mr. Chairman, Edward Mullen with Reed Smith, representing Airbnb. I'm going to take issue a little bit with the premise. I think the local enforcement has always been a part of this process. And currently there's all the enforcement ability in the world for Loudoun to pass ordinances, and if there's a violation of the ordinance, either specifically to short-term rental or general zoning or whatever, go shut the property down.

  - As to the legislation, what it did there was a limited preemption of that as to primary residences in certain situations that you had to qualify for. There were things outside of that like if this is not this woman's primary residence, that would have been left up to existing law, which is the locality can regulate and shut it down if it is able to do that. It's not that the legislation would have prohibited it. It would have left it up to local control as currently exists.

  - So from a premise point, part of the process that we are going through now is to talk about a process whereby these sorts of things can be reported and dealt with. I'll say from a federal law standpoint, you can't make people take things off a platform. So the goal is to get to a point where there is a good reporting mechanism that's verifiable and that's the locality doing the enforcement and reporting up through a channel. That's been done in certain localities around the country where they've set up these frameworks. It's not to my awareness been done at the state level yet. I think part of the conversation that we're having here is on that topic.

- **Peace:** Part of the challenge they have is that they're the only ones here at the table. There are other platforms. So they delist somebody for a year or whatever the time

period, say you have to freeze, you can't participate, they're going to go right to one of these others.

- **Bulova:** And, Mr. Chairman, that was exactly the same thought that I had and I guess what makes me a little nervous with respect to how the law, the draft was set up. We can deal with one entity, an Airbnb. I don't know that any of that is replicable in statute to apply to all those host platforms. I guess that is why I'm concerned that you wouldn't want to maximize the ability of a locality.

    - Again, enforcement is two things. Certainly you're not taking away the ability to enforce, but in order to enforce you have to actually know that a violation is occurring. You can make that very transparent or you can make that very, very difficult to be able to see. So I think that's where the issue is coming down. And you certainly knowvthat.

    - I think the chairman brings up a really good point, which is that we aren't dealing with just Airbnb. That would make things rather simple. We need to be able to replicate this process and the certainty across different host platforms.

- **Mullen**: Understanding that, I think the legislation that was put forward really premised some of the preemptive business on paying taxes—again, I don't have the legislation in front of me—through a limited residential lodging. And qualifying for all of that meant you were doing certain things and certain things that my client wanted to do and expected to do. Other people or other platforms that perhaps didn't do that maybe wouldn't have been entitled to it the way it was set up. There was incentive to do exactly as you suggest.

- **Peace**: Maggie Ragon.

- **Ragon**: Mr. Chairman, Maggie Ragon with Commissioners of Revenue Association. I wanted to just make the points that the localities do have the ability to collect and to go back several years and assess those taxes that have not been collected to this point. The business license and TOT are self-reported by the business owner. The main impediment to us not being able to enforce those rules as opposed to sort of the juice and the squeeze theory is that we really need that registration information from the hosting platforms in order to be able to work with these folks who have not reported to us.

    - For small localities, commissioners of revenue, absolutely. And even for some larger ones, commissioners of revenue, they absolutely have the ability staff-wise and are willing to work with these businesses and do the information collection and tax collection that's needed. That's part of what we're charged with, and that's what we're here to do.

    - Again, the main impediment is knowing where those businesses are operating for those who are not currently reporting to us. But I wanted to make clear that we do have the ability to do that tax collection, and that work is needed.

- **Peace:** Thank you very much. That's why you're here. Yes, Delegate Knight.

- **Delegate Barry Knight:** Yes, sir. I've been sitting here listening a little bit. I think we're kind of close; we just have some problem areas in here.

    - When we craft legislation, sometimes we have to compromise because we are charged with the health, safety, and welfare of our citizens out here. To get to the commissioner's statement, we don't know who they are up there. If they could be localities such as Virginia Beach, these are the rooms that are being rented tonight. If we needed to go because there's a police call, we would know that situation. We would know we could collect the taxes there.

    - We have a short-term working group in Virginia Beach also that's just been appointed. We're trying to get Mr. Mullen on that thing, if he can get permission to add perspective from Airbnb. And we do recognize Airbnb as one of a few hosting platforms. But he's here, so that's why we're picking on him.

    - One thing that I did see today in my mind is I think we need a definition of *occasional*. If we say *occasional* is five times a year or once a month, then maybe if we defined *occasional*, maybe that will set precedent for what your homeowners policy is going to cover. And anything greater than that—and we've got documentation because you all have let us know—the hosting platforms have let us know—needs to have a commercial policy. That's something that's a big thing that we've been talking about today. So let's just define *occasional*, if we can.

    - The other thing that we need to have that we've been getting so many comments from my jurisdiction on, which are Virginia Beach and Chesapeake, is we need to have a level playing field between the hosting platforms, hotels, bed and breakfasts, and vacation homes. Everyone needs to have a level playing field, and that means to go to zoning issues, insurance issues, and payment-of-tax issues. If we can get these things worked out, I think we're well on our way.

    - **Peace:** Thank you very much for your presentation, for being here.

    - **Erickson:** Thank you. It was my pleasure.

V. Public Comments

- **Peace:** At this point in our agenda, we have public comment. I know that there are folks who are here. It's 3:24 [p.m.]. Our traditional rules on public comment would be limited to three minutes each. I'm not sure if there was a sign-up; I didn't see one. If you want to speak and offer brief public comment, we certainly want to hear that. The lectern is open. Thank you.

- **Phil Kellam**, *Commissioner of the Revenue, Virginia Beach***:** Thank you, Mr. Chairman. My name is Phil Kellum. I'm commissioner of the revenue from Virginia

Beach. Virginia Beach has been proactive in this issue dealing with short-term rentals and with online rental providers. I have prepared a few remarks to talk about an ordinance that we just passed in Virginia Beach—or our governing body just passed.

- In Virginia, a local transient occupancy tax is paid by any person renting lodging. In Virginia Beach that's defined as ninety days or less. The lodging provider is responsible for collecting and remitting the local transient occupancy tax to the locality. Ordinarily, it is my responsibility as commissioner of the revenue to discover local lodging providers by their registration and purchase of a business license. However, a homeowner offering his property for lodging via an online rental provider, such as Airbnb, usually does not require a business license. They are in business, but there is a provision in the state code that may exempt them from that business license.

- I've contacted the online rental provider Airbnb on four occasions over the past year in an official manner to the various departments that would handle these administrative questions, to no avail. And frankly and bluntly, lip service would be an overstatement from the type of correspondence that we've received from Airbnb.

- The current methods of discovery are impractical. You've had some folks point out how we have to kind of pretzel ourselves to find out the information because the street address is not listed on there. In Virginia Beach, we've had some success with that, but not near enough.

- So I worked with the Virginia Beach City Council to develop an ordinance to accomplish three things: One, to raise awareness. Everybody knows about the sharing economy, but everybody really doesn't understand. Everybody thinks it's great that they can go on their phone and order this or order that. But they forget that it is, in fact, a business transaction, in most cases, and it is in direct competition with established businesses. That's disruptive. But it doesn't have to be destructive. So we wanted to raise awareness and begin the discussion in Virginia Beach.

- Next, we wanted to increase compliance. It's been tremendously tough to do that. So we looked around to other localities—I'm about to get beeped off here. May I have a bit of an extension, sir? Okay, thanks.

- We looked at localities around the nation and there are certainly available opinions around the world. But all of them said that to get the attention of these rental providers, you're going to have to have something that is punitive, something that will—there has to be a fine if they're not coming in voluntarily. The law is in place. They are required to collect the TOT from their patrons. But again, I don't have a natural manner of discovery. So the ordinance that we put in place was to increase compliance.

- This is the third and final point, the ordinance was also put in place to gain a credible basis of what's going on out there. We can get various reports from Airdna, KPMG—all kinds of different groups are doing analysis on that. But it's a local tax. The local revenue administrator—in this case the commissioner of the revenue—should be the one that is reporting on this. It is my responsibility to find those businesses and find those people that are subject to the local ordinances that are passed.

- The effect is that this is an evolving industry. I think we all know that. And many of us would like to think that it may disappear. But it is evolving, and it's going to evolve in many ways that I think we don't anticipate. I have an article here that says it's the fastest growing hospitality business in the world. I have another article that says Airbnb is beginning to test service for tourists to book add-on services. Quote, "Our basic idea is I want to go to a city, you feel like you live there." This is the CEO. He said this at an interview with Bloomberg Television. When people go to a place, they want much more than just a home; they want to be part of the neighborhood. What we are really focused on doing is how can we immerse them in the neighborhood.

- Mr. Chairman, you and members of the General Assembly have a lot of questions before you. Mine deals with revenue. But there are solutions here. Delegate Knight and I have had discussions. And I think that there's a practical way to deal with this, whether we collect the tax locally and we receive some engagement from online rental providers or whether they deal with the state.

- The last point I'll make is if they deal with the state directly, we would still need to have the specific information on each home that is rented, not the aggregate information. They're in direct competition with other people that rent bed and breakfasts, that rent homes to licensed real estate agents, and hotels. This is a key element of the Virginia Beach economy. It's a $30 million revenue stream, just the lodging tax in Virginia Beach. But it's also important to people around Smith Mountain Lake. It's also important to people in other localities. It's an evolving thing for which I think we really need to look for solutions and not just a quick solution. Thank you very much.

- **Peace:** Thank you, Commissioner. I appreciate you being here.

- **Jerry Stokes**, *Airbnb host, Fredericksburg*: Mr. Chairman, members of this workgroup, my name is Jerry Stokes. I live in Fredericksburg, and I am a host. I note that there are no hosts involved in this process. I think it would have been much more productive if you'd had some of us who are actually experienced at being hosts to be a part of this.

  - My wife and I are retired empty nesters. We have one bedroom, twin beds. We rent it for $100 a night. Airbnb takes $3, so we net $97. Our average is two nights a month. Really small operation. The two, three hundred dollars we get goes toward paying our monthly real estate tax of $325.

- A lot of the discussion here today has been about situations that have no applicability to us. We live right in downtown Old Town Fredericksburg. We live across the street from George Washington's sister and brother-in-law's place, Kenmore. We live three blocks from Mary Washington's house. People love where we live and staying there. And we are there. We don't walk off and leave other people in our house. There have been no complaints about Airbnb in Fredericksburg in the couple of years it's been operating.

- So I'm here today to encourage the legislation that you passed with maybe some tinkering, but a statewide approach. The reason is this is the onerous package that I got from a Fredericksburg zoning office. Twenty-four pages of hoops I have to jump through. Here is a one-page application from Charlottesville—one page of regulations and one page of directions. The estimate for jumping through the Fredericksburg hoops is four to six months. Charlottesville's requirement is one day to register.

- I have absolutely no objection whatsoever to paying the taxes. I don't mind registering. I don't mind getting a license. I just want consistency across the state, and I don't want to have to go through this kind of process.

- **Peace:** Sir, before you depart, would you restate your name, please, for the record?

- **Stokes:** My name is Jerry Stokes, 600 Lewis Street, Fredericksburg.

- **Peace:** Thank you very much. I think if you could communicate that to your delegate—

- **Stokes:** I have.

- **Peace:** —it might be helpful.

- **Stokes:** I sent the speaker and Senator Rives a package with this.

- **Peace:** Thank you very much.

- **Flynn:** Mr. Chairman, just very briefly. Mark Flynn. I would just note—and maybe Elizabeth could get the article from the Fredericksburg paper today. There was a Dodd family that has an Airbnb in Fredericksburg. They went through a CUP process. I'll send that out.

- **Peace:** I believe the *Freelance Star* did an editorial as well that was in the clips. Among the statements they made was the editorial called for a statewide solution. Thank you. Sorry to impede on your time.

- **Vishal Savani**, *Savara Properties*: No worries. I'm Vishal Savani. I'm with a company called Savara Properties. We operate the Linden Row Inn right here in

downtown Richmond. I feel privileged here to give you a little bit of a perspective that we have coming from the small inn and boutique hotel industry.

- Our property employs about 20 employees. We last year hosted about 17,000 guests. We remitted over $250,000 in state and city taxes. The Linden Row Inn is able to compete and grow in Richmond because we operate on a level and legal playing field. We follow appropriate health and safety regulations. We remit taxes according to state and municipal tax codes. And we are constantly exploring new ways to improve the guest experience, promote innovation, drive growth, and increase jobs. But it must be done in a legal manner that safeguards consumers. We're not trying to create bureaucracy or anything like that, but we do feel that there's a need for there to be regulations.

- We support the rights of property owners to occasionally rent their homes to earn extra income, but we share the concerns that local residents have expressed about the growing number of commercial operators who are using sites like Airbnb to run multi-unit, full-time lodging businesses without any oversight. We believe that smart, commonsense short-term rental rules are needed to level the playing field for all types of legal lodging businesses and to protect communities from the growth of illegal hotels that have proliferated in cities such as Richmond, Virginia Beach, throughout the state. It's an important first step towards addressing the growing problem of commercial landlords using platforms like Airbnb to run unregulated, untaxed, and often illegal lodging businesses.

- A recent report on Airbnb's commercial activity in fourteen of the nation's largest cities found that a substantial amount of Airbnb's revenues in those cities, to the tune of $500 million last year, came from commercial operators or those that operate two or more units for rent on Airbnb. These worrying trends are [unintelligible] places like Richmond where commercial operators are turning residential properties, and in some cases buying them up, no intention of living there, but rather for the sole purpose of renting them out to short-term visitors just like a hotel. Richmond has taken steps to address short-term rentals in the city, making them illegal within the city limits due to zoning restrictions. However, Airbnb and its commercial operators are directly ignoring the laws put in place by the city, and they continue to operate illegally.

- Competition drives our industry, and we welcome new competition from short-term rental platforms, but it must be fair competition. Airbnb and its operators have demonstrated that they cannot act in good faith in Virginia or be a constructive partner in creating smart short-term rental rules for our communities.

- For example, requiring the collection or appropriate taxes is what makes it a level playing field. That's what we do, $250,000 plus last year. Letting Airbnb decide whether to collect and remit those taxes is not a level playing field. Preemption of local zoning laws, as was sought in the Airbnb-sponsored bill, also violates many protections people across the state enjoy to preserve the character of their

neighborhoods. Public safety, life safety, health safety—all of those things, those need to be abided by as well. As a hotel, we actually have to go through a lot of hoops. And they're all hoops for the safety of our guests.

- In conclusion, we feel that there just needs to be more of a level playing field between operators and the hotel industry. Thank you.

- **Peace:** Thank you very much.

- **Fred Zimmer**, *Resident, Fairfax County*: Hi. My name is Fred Zimmer, and I live in the Northern Virginia/Mount Vernon area of Fairfax County.

  - While this group seems to be focused mainly on regulation/insurance/taxation for the state, as a homeowner, we have rights, too. This group should study the negative impact this concept brings to most residential R-1 neighborhoods where it exists.

  - I am a 32-year resident of the current home I and my wife raised our two children in. We live in a private middle-class neighborhood within Fairfax County. Most of our neighbors have lived on our quiet dead-end street for the past 25 to 40 years. Last year, a home across the street from us was purchased by a woman with the sole intent of operating an Airbnb. This is not her primary residence and is only there when the Airbnb is not rented.

  - This past February, our neighborhood was introduced to the Airbnb experience firsthand. At seven a.m., our quiet neighborhood was barraged military style by many cars and trucks. Within about an hour, there were four tents constructed in the street, and the trucks were emptied of large lighting and camera equipment. About midday, we were apprised that this was a camera crew filming a Volkswagen commercial. The same venture was repeated again in May.

  - Since February of this year, we have a constant flow of large groups renting this large six-plus-bedroom house. Most groups are averaging around fifteen people. This constant loading and unloading of unknown people is very unsettling and has had a very negative impact on our neighborhood's sense of security and the quality of life that we purchased thirty-two years ago.

  - The term *sharing economy* keeps being thrown around. I would ask anyone who lives next to or near one of these Airbnbs if they think we should be sharing. We should not be sharing our hard-earned way of life with these totally unknown hotel guests. While this group seems to be focused on the regulation, we really should be looking at personal interest. Thank you.

- **Sharon Elswick**, *Holiday House Bed & Breakfast, Orange*: Hello, my name is Sharon Elswick. My husband and I own the Holiday House Bed & Breakfast in Orange, Virginia. And we are just like Airbnb hosts. We were living in Northern Virginia. We decided we had a dream. We wanted to live in a historic home in a small country

town. And the only way we could do that was by renting out some rooms. We've not become the one percent by owning a bed and breakfast. We very much enjoy it, and it really does help us pay our mortgage.

- Also like many Airbnb hosts, my husband has a full-time job outside of the inn. To become entrepreneurs, we did it legally ten years ago as 30-year-olds. It's not that hard. If we could do it then, lots of folks can do it.

- Becoming entrepreneurs the legal way means following all of those regulations that you all heard about today, running through all those insurance numbers, and learning all about owning a little business. We sometimes experience some very granular regulations. The Health Department can actually tell me when I can bake my cookies for the afternoon. I'm pretty sure my other Airbnb host neighbors are not sitting there with an ABC agent, armed, looking for my paperwork and my inventory to check out booze regulatory issues within my home.

- We are not grousing about the regulations. They're there. This body has passed it, and we believe in it. As entrepreneurs, we have accepted that. It is necessary for transparency. I think that was mentioned a few times today already. It's necessary for our guests, our neighbors, and our community. And we love engaging in our community, investing in our community, in our neighbors, our time and our money.

- Occasional stays have been mentioned a lot, figuring out that magic number. For me as a small six-room inn, it's not that *occasional* that matters to me, it's the preponderance of all the *occasional*. Beth mentioned three times the number of rooms are available on Airbnb than her bed and breakfast in her county. So it's not that Joe Schmo is just renting a few times a year. It's that hundreds of Joe Schmos are renting a few times a year. Without them having to be entrepreneurs and play in the same field that I am, I cannot compete with that. I cannot compete with the time and the money investment. And that's the issue that just a small six-room inn faces.

- If we're all doing the same thing, we all are renting our homes out, rooms in our homes, I don't understand why when we're all doing the same thing that there are two rule books. It doesn't make sense, and that's not something that I can compete with.

- I would love to see a more level playing field. I would love to see Joe Schmo have some regulations that they also have to abide by so that I can compete and that it's not just a historic home that we had to go away from because we also could not pay our mortgage because we did not have a playing field that we could compete in. Thank you.

- **Jack North**, *Mayhurst Inn, Orange*: My name is Jack North. My wife and I own and operate Mayhurst Inn in Orange, Virginia. We know Sharon well. It's good to be back; I was here last month.

    - Here's some new information, if you didn't know this already. The IRS has just put up a website that says, "Here's how you deal with a sharing economy." The amazing part about it is they've already overcome this issue that Virginia is struggling with. They realize they are companies and I quote: "There are tax implications for the companies that provide the services and for the individuals that provide those services." Guys, if it walks like a duck, it quacks like a duck, it's a duck. It's a business.

    - I don't know why Virginia struggles with this. We do the exact same thing as Sharon has just described. We're de facto and de jure businesses. Virginia requires businesses to register. Period. Let's get on with this. Get registered. That makes the entire issue about the impediments to collecting taxes go away. As soon as they require them to be a business, Airbnb can simply put it up on their website. Here's the name, their address, and their business license. Problem solved. You get rid of the entire problem.

    - Airbnb and their hosts need to stop trying to change everything and get on board and simply work with the governments and the communities. And their hosts need to start up and run businesses like businesses. And it's real easy to set up a business in Virginia. Filling out all the paperwork may take you fifteen or twenty minutes.

    - I was personally insulted when the Airbnb presentation last month said to me, as an Airbnb host because I am, that I wasn't sophisticated enough to understand how to fill out the paperwork or file my taxes. Folks, this is the easiest thing in the world. It takes me five minutes a month. I put in three numbers, press Enter, and it computes all that for me. I don't even have to do the high-level math. And it sends it off to the state and pays the taxes. The guy from the Department of the Revenue in Virginia said it was a real complex process. He needs to try this out a couple of times. It's simple.

    - I implore you to wake up, Virginia. A business is a business. Treat it like a business and this entire problem goes away. Thank you.

- **Peace:** Thank you. Welcome.

- **Chris Eudailey**, *Virginia Fire Chiefs Association*: Good afternoon, Mr. Chairman, members of the working group. My name is Chris Eudailey, and I'm here today representing the Virginia Fire Chiefs Association. I have just a handful of points I want to make and share with the group.

    - Because of the lack of registrations of Airbnbs, this could certainly have a negative effect on fire and life safety aspects in each locality. Registration with

local governments is necessary in the event of a fire, emergency medical response, or a law enforcement issue with the arrival of the first responders thinking that a small number of a regular family, maybe a handful of folks are there. Instead we may have three or four times that number of folks that are there.

- Also with the excessive family members or the excessive guests, you may have a number of vehicles that block both the egress and fire hydrants that might be in those areas.

- The Virginia Fire Chiefs Association feels that once an owner begins operating a short-term rental, they are no longer a residential property but a business in a residential setting. Therefore, they should meet requirements, at least those applicable to bed and breakfast inns. This would include safety inspections and building code requirements.

- There have been a number of speakers today that have talked about public safety issues and concerns, from Virginia Beach to others, including local zoning issues. The Virginia Fire Chiefs Association would respectfully request that public safety concerns be added to the next agenda from law enforcement, EMS, and fire standpoints to make sure that the safety and welfare of the folks that stay in those facilities is well addressed. Thank you.

- **Peace:** Thank you, sir. I appreciate your service. Welcome.

- **Don Smith**, *Resident, Henrico County*: My name is Don Smith. I live in Henrico County, and I live in an area that has about 1,100 homes with 100 acres of common area. We have a lake. We have trails, all that sort of thing. I live in a house that's maybe assessed at a half a million dollars.

  - So I'm out there, and these cars pull in next door to me. There were four cars. There are eight to ten people. There were kids. There were three dogs. They come running across my yard doing their business and chasing my grandkid back into our house. And he didn't come out for the two days that those people were there. Turns out my neighbor leaves the place. He's gone for two days here, one day there, three days here. And he's doing this on a semi-permanent basis, renting it out through Airbnb.

  - I don't think I could sell that place for half a million dollars anymore. That's just the way it is. I've talked to Henrico Animal Control— doesn't work on a 911 basis. There are sexual predator laws that you may or may not be aware of that require people to register if they have a history of that sort of thing. None of that is being taken care of.

  - Did you know that in Austin, Texas, Uber was told that they couldn't operate if their drivers didn't get fingerprinted and bring their criminal history and so forth into view? There are a lot of things like that that are going on that we need to be a part of.

- Some of these other comments that were made just recently here, I'm not going to repeat it because you heard it, but they really strike home. Quality of life is an issue. In my area, there are no sidewalks. The lawns come right down to the street. If you want to walk to the trails, you want to walk through. You have kids on bicycles; you have all this stuff in the street. I live on a cul-de-sac, and these people come around right over the corners and everything else without paying attention. They don't know where they are, really. It's not a good thing. It's just not a good thing. There has to be a compromise in here somewhere.

- My last thought on that is if you call it a business, then in our area, which is HOA, it is helpful because we can control a business. You cannot change covenants that were written forty years ago any easier than you can change the Constitution of the United States. You have to get a lot of people together. You have to get an 80 percent vote. You can't even get 50 percent of Americans to vote after they talked about the election for two years. It wouldn't work for us. But if you call it a business, we can control it. And if you also would put in the legislation that you will allow a board of directors to decide this issue, then we can deal with that as well. A lot of people in this area would be better off. Anyway, you get the point.

- **Peace:** Thank you, sir, appreciate it. Welcome.

- **Edward Denton**, *Virginia Beach Hotel Association*: Good afternoon, Mr. Chairman, members of the committee. I'm Edward Denton from Virginia Beach. I'm here today somewhat officially in the capacity as a board member for the Virginia Beach Hotel Association. But I am also a homeowner in Virginia Beach. I'm a parent. And I am a licensed real estate broker in the Commonwealth of Virginia, as well as North Carolina.

  - To me, I think this issue has been overcomplicated, candidly. I say that because of this: I've heard a lot of talk around the complexity of the registration process or why it needs to be a statewide issue versus a local issue. At the end of the day, this is a business model, and it's a new way of transacting business. It's been happening in the Commonwealth for decades.

  - I know this about other areas of the law. For example, I wanted to occasionally make money selling real estate. Guess what? I had to go get a real estate license in order to do that. I have a hairdresser who I go to, believe it or not. I'm balding, but I do go occasionally. She happens to live in my neighborhood. She has a business license. She's also been licensed through DPOR. And she has a particular permit that hangs on her wall that allows her to do business out of her home in my neighborhood.

  - So I don't really understand, candidly, what the issue is. I think that at the end of the day, the homeowners ought to be required to register. They ought to be required to follow the same exact laws that bed and breakfasts follow because

that's what they are, people. A transient inn is all it is, and that's been around for a long time. There are laws that exist for it.

- In the case of Airbnb specifically—and I don't think is true for all the online agencies—Airbnb actually collects the revenue, and in my opinion is therefore already legally obligated to remit the taxes because they are collecting the revenue and sending it back to the actual property owner. That's my interpretation of it. So how they've skirted that to date I'm not really clear on.

- I don't think the issue is isolated to Airbnb. I think it's a much broader issue, which really has some very simplistic answers in that they ought to be registered, they ought to go through the same licensing, life safety, tax laws that everyone else goes through in the Commonwealth to conduct business whether as an inn or any other business. Thank you for your time.

- **Peace**: Thank you for coming. Welcome. I believe this will be our last speaker. Thank you.

- **Diana Burke**, *Virginia Beach Hotel Association*: I think I'm going to be the most popular because I'm going to be the last and hopefully the shortest, which people that know me will say no way, because I talk a lot. But my name is Diana Burke. I'm the executive director for the Virginia Beach Hotel Association.

  - First, I just want to thank everyone that has participated. I've sat through all three of the committee meetings. I've learned a lot of great information. And I just applaud everyone for being here, so thank you for the opportunity. I'm not going to rehash what everyone has already said other than—gosh, I loved the gal from Loudoun County. Where are you? She was very, very informative. Thank you so much.

  - I just want to reiterate if I could get paid by the meeting, I'd be a rich woman. I sit in a lot of meetings in my role, and I'm thrilled to do so. I, too, look at protecting tourism, especially in Virginia Beach. As you can see, it makes a lot of sense. In our area—and I know Phil and Bob and Angie could share—part of our TOT tax goes to designated revenue sources. We refer to it as the tip and the tap fund. It goes to advertising. And the tip is our Tourism Investment Program. A lot of capital investment. We sit back and we analyze data, so data is key for us.

  - So if we do have this wonderful Airbnb market that's coming online, thrilled to have it. Thrilled to have competition, even though the press likes to say we're so against Airbnb. We're not. But we need the data. We need to know who's coming or who's interested in coming to our locality. Without that, we can't make great marketing decisions.

  - And I promised I'd be brief, so I'm going to sum up. We so look forward to this continued collaboration, but I do have to say from our locality we really want to bring this to a decision. And we look forward to the tax remittance. Thank you.

- **Peace**: As do we. Thank you very much. Workgroup, thank you for your patience, for all your questions, your engagement. This was, I think, another robust session. Are there comments from member of the workgroup prior to departure? Mr. Rives.

- **Rives:** I've been pretty quiet today. VACO would like to support the request of the fire safety people. We think public safety is a critical issue that needs to be addressed by the committee. And we would encourage that to be on the next agenda. The state chiefs of police could be invited to participate, but certainly the fire chiefs need to be here.

- **Peace**: Thank you very much. Are there any other comments or input?

    - At this point I think what we'll do is we'll delegate Elizabeth to work with all of us to set the next meeting, which may be—I don't know when we're going to be looking at for the next session, but we don't have one currently set. I'm thinking maybe the first week, third week of October. That would give us enough time to kind of digest this, get some of the information back. I think we're restricted in terms of when we can meet, first and third weeks, I believe. We will look at everyone's calendar and see when we can have the most people present for that and go from there.

    - In the interim, as always, please send your information to Elizabeth through the Commission. In your packets, there were a number of print-offs, letters from citizens, other groups, local governments expressing their particular position on the subject matter. So I ask all the workgroup members to review that public comment, which is contained within your packet and represents comment that was not given orally today.

VI. Adjournment

- Upon hearing no further requests for comment, Delegate Peace adjourned the meeting.

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

Short-Term Rental Work Group
Monday, November 7, 2016, 1:00 p.m.
House Room 1, The Capitol

I. Welcome, Introductions and Call to Order

- Delegate Christopher K. Peace, *Chair*

II. Building Code Issues Regarding Short-term Rentals

- Sherie Hainer, *Building Code Official, City of Virginia Beach*

III. Bill Matrix Discussion

- Logistics: Lisa Wallmeyer, *Division of Legislative Services*
- Discussion: Delegate Christopher K. Peace

IV. Public Comment*

V. Adjournment

*(Three Minute Limit)

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

TRANSCRIPTION

Virginia Housing Commission

Short-Term Rental Workgroup
November 7, 2016 - 1:00 p.m.
House Room 1, The Capitol

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

Members in attendance: Delegate Christopher Peace, *Chair*; Senator George L. Barker; Delegate David L. Bulova; Delegate Betsy Carr; Delegate Barry D. Knight; Mark K. Flynn, *Governor Appointee;* and Laura D. Lafayette, *Governor Appointee;* Ron Rordam; Mark Haskins; Chip Dicks; Robert Bradshaw; Maggie Ragon; Amy Hager; David Skiles; Edward Mullen; Pia Trigiani; Sterling Rives; Eric Terry.

Staff: Elizabeth Palen, *Executive Director of VHC*

I. Welcome and Call to Order

- **Delegate Christopher K. Peace**, *Chair:*

  - As everyone will recall, at the end of the last General Assembly session, Senator Vogel's bill passed with a reenactment and a charge to the Virginia Housing Commission that reads: The Housing Commission shall convene a work group with representation from the hotel industry, hosting platform providers, local government, state and local tax officials, property owners, and other interested parties to explore issues related to expansion of the framework set forth in this act related to the registration, land use, tax, and other issues of public interest associated with the short-term rental of dwellings and other units. The workgroup shall take into consideration existing structures, governing the activities of bed and breakfast inns, vacation rentals, and other transient occupancy venues. The work group shall complete its work by December 1, 2016, with the goal of developing recommendations and draft legislation for consideration by the 2017 Session of the General Assembly.

  - I want to thank the staff, especially Elizabeth, for all of her hard work in getting us to this point. I would also like to recognize Lisa Wallmeyer who has spent

countless hours, both in session and since, on the matrix that you have in your packets before you and other considerations.

- Today's meeting we'll hear from building code representatives in light of various requests to have us consider areas concerning public safety concerns that have been raised along the way. We are grateful to have building code official Sherie Hainer from the City of Virginia Beach to present.

- After Sherie presents her information for the benefit of the work group, we'll have Lisa present a high-level overview, as I've been told, of the policy considerations concerning short-term rentals, and for our consideration, questions and comments. I'd ask at that time after she reviews the matrix, which is also in your packets before you, that we would reserve questions and comments until she's through her presentation. So hopefully you can write them as they come to mind. Many of the considerations are related to one another. Thank you for your indulgence on that.

- We will have public comment and discussion and may take a temperature on the matrix and the questions that are presented at the appropriate time.

- Are there any questions or comments before we begin our meeting? Hearing none, Sherie, are you with us? Great. Thank you for coming from Virginia Beach. I appreciate your being here. You have a lot of good representatives from the City of Virginia Beach.

II. Building Code Issues Regarding Short-Term Rentals

- **Sherie Hainer,** *Building Code Official, City of Virginia Beach*: Thank you for having me here today. We've been sort of struggling with this problem in Virginia Beach with Sandbridge. I have a little bit of information that we're using as guidance at this time.

  - In the paperwork was a matrix of use group classifications. The Building Code looks at the use of a structure and the amount of hazard that's involved with the occupant while using that structure to determine height and area limits and other life safety issues.

  - The residential classifications are divided into five groups. The first one is R-1, which is the hotel/motel. It's for use of sleeping units in a structure for less than 30 days.

  - R-2 is for more than sleeping units, maybe even in dwelling units that are of a more permanent nature. And *permanent nature* is more than 30 days. It also talks about dorms and fraternities. I have some life safety requirements we'll go over in just a second.

  - R-3 is categories of units that are bigger than what we consider residential. And they have to be constructed in accordance with the International Building Code.

There's the International Building Code and the International Residential Code. They're very different.

- R-4 is residential uses for nontraditional residential uses. It's halfway houses, some convalescent care where you wouldn't be kicked into a more restrictive use group classification.

- R-5 is single-family homes, duplexes, and townhouses.

- Based on this matrix, whatever the use group classification is determined, that determines other Building Code requirements. All R-1 structures have to be sprinklered. They have to have a sprinkler system, except—and that's an exception on a page that's handed out, Terms and Exceptions. If you look under R-1, there's an exception for bed and breakfasts. If it is nonoccupied by the proprietor, a maximum of 10 occupants, you don't have to sprinkler it. They're still counting it as residential, and you can have smoke alarms instead. If you have a proprietor-occupied bed and breakfast, you can't have more than five guestrooms. Most people have two per guestroom, so you're back to the 10 occupants. Again, you don't need sprinkler systems; you can just have a smoke alarm there.

- The reason for the sprinklers and other requirements are rated construction for egress. You have to meet accessibility. The reason for that in an R-1 is that you're there less than 30 days. If you wake up in the middle of the night, you're not where you usually are, so you need time to respond to a hazard. To give you more time to get out of the building, we have the sprinklers. That increases the time to get out. You have rated corridors. You have separations between the units so that if something happens in one unit, you can get out before the fire can spread.

- The R-2 are apartments and condos. The only difference between an apartment and a condo is one is leased and one is purchased. The construction requirements per the Building Code are exactly the same. Added into that are vacation timeshare properties. This was a hard battle at first for us to try to comprehend, but they are constructed as apartments. They have the same fire protection and sprinklers as apartments. The intent of timeshares originally was you bought one and you came back to that same unit year after year, so they assumed there would be some familiarity. So they counted them just as apartments.

- All apartments have to be sprinklered unless they're two stories or less and extra fire protection is added. But generally anything over two stories would have to have a sprinkler system so you have that inherent protection there.

- The other two don't really apply to the short-term rentals. The next is the R-5, the dwelling units. We are dealing with this in Sandbridge. Even though there may be eight bedrooms and six baths, it's still a residence. That's the intended use for the structure, and that's how it's constructed per the Residential Code.

- I was talking to a builder not too long ago who said the sweet spot for rentals is the eight-bedroom. If a family comes, you have grandparents in one room, however many siblings there are, they each take a bedroom, and then their children take a bedroom. You need that for it to be a true family experience. The problem with that changes when you have multiple tenants in the building or there is some other event that occurs in the structure like a wedding or a bachelor party. That's when we start to get the calls.

- There are provisions in the Building Code for change of use. You could determine that it is a house, that it's built according to the Residential Code, and it meets all of the requirements of a single-family home. And even as a rental it still is a single-family home. But if they change it to have a wedding, you've changed it to an assembly use, which takes it out of compliance. What we're trying to do in Virginia Beach is to identify what is an event that would trigger a requirement and would it be that we now start building those structures to the most restrictive requirements or do we grant temporary special use conditions for the occupancy of that structure just for that specific use?

- I know that's a lot at one time. A lot of this ties into the Zoning Code. Our Zoning Ordinance allows only four unrelated people per structure. So if you have more than that who are not related, you could be in violation. There are overcrowding provisions in the Property Maintenance Code after a house has been built and it's leased out. We had some problems this summer with kids coming in to work at the beach. And in one house, there were 42 people. So we were able to stop that through zoning.

- The main portion of the code that would apply is the length of time that they're there and also the hazard that would be presented. If someone is renting a house for a week and they're using it as a house, there's really not a change of use and the amount of hazard hasn't changed.

- **Peace:** That concludes your presentation?

- **Hainer:** That's it.

- **Peace:** Okay. Thank you for your hard work. Are there questions or comments from members of the work group, Commission members, legislators? Mr. Rives.

- **Sterling Rives**: Thank you. Could you tell me whether there are any other special requirements for bed and breakfasts, B&Bs, aside from the provision that they must have a working smoke alarm?

- **Hainer**: If they go beyond the scope of the exception where they have more than 10 people or more than five guestrooms, then yes, they would have to meet the sprinkler requirement. They would be treated the same as a hotel.

- **Rives**: But otherwise there are no requirements that could apply to a B&B different from the requirements that apply to a single-family home?

- **Hainer**: That's the intent, to try to keep that feel of it being a single-family home.

- **Rives**: Do you do inspections at B&Bs to assure that there are smoke alarms?

- **Hainer**: Yes. The change of occupancy allows for changes within the use group classification. If a structure is built as a single-family home and now they're going to convert it to a bed and breakfast, that is a change of use within the use group classification. We would inspect it to make sure that it met all of the requirements for a B&B.

- **Rives**: Are there then annual inspections after that?

- **Hainer**: Not at this time. Depending on the locality, the fire marshal may inspect it to make sure the alarms are still operational. Depending on how it's rented, the property maintenance officials in different localities may look at it as a rental property and they do an annual inspection. But the Property Maintenance Code is not mandated; it's by local adoption. So it would depend on the locality.

- **Rives**: Thank you.

- **Peace**: Thank you, Mr. Rives. Yes, Delegate Knight.

- **Delegate Barry Knight**: Barry Knight. Sherie, I think one thing you may have been asked I could have gotten wrong, but for B&Bs, the difference between them and residential houses, we do have to have a special use permit in Virginia Beach for the B&Bs?

- **Hainer**: That's through Zoning.

- **Knigh**t: Right, exactly.

- **Hainer:** That's not part of the Building Code; that's part of Zoning.

- **Knight:** Right, right. I just wanted to add clarity to that. And Mr. Chairman, we have issues in Virginia Beach just like we're discussing here today. We have hotels, we have B&Bs, we have these North End homes, and we have these Sandbridge homes. We have now what we're trying to define as event homes, which we're talking about. We also have special tax classifications down there because Sandbridge has a special—we call it a "sand tax" down there where the tax rate's a little bit higher if we need to get some sand in there. We have just as many things we're discussing at a local level at Virginia Beach as we are here today on a state level.

- **Peace:** Thank you, Delegate. Yes, Mr. Bradshaw.

- **Robert Bradshaw:** Ms. Hainer, you mentioned a house with 42 people and we put a stop to that. Did somebody complain and so the City stepped up to the plate?

- **Hainer:** It was in a residential area that falls under the Property Maintenance Code for the number of people who can be there. There's a square footage allotment per person. Of course someone called and complained that it exceeded that, and it did. So they were able to find other housing for the people who were there and contacted the owner of the property to let him know he was in violation and he couldn't do that again. Then they continued to monitor the situation to make sure that it doesn't happen again.

- **Peace:** Mr. Mullen.

- **Edward Mullen:** Thank you, Mr. Chairman. Edward Mullen. That's a very helpful explanation. I just wanted to note, Mr. Chairman, that your legislation did specify one contract at a time. Of course all of those sorts of occupancy limits, people that can be in the house at a single time would have been generally applicable and hence it wouldn't have been impacted by your legislation.

- **Peace:** Further comments or questions for Ms. Hainer? Mr. Rives.

- **Rives:** Mr. Chairman, just one minor correction. Your legislation specified only one contract at a time on a regular basis, which implies that on an occasional basis, you can have multiple contracts for occupancy in the same dwelling. I don't think it's defined what's regular and what's occasional. That's sort of an open question.

- **Peace:** We'll save that for discussion. Any other questions or comments? We thank you for coming all this way. We appreciate your expertise and your service.

- **Hainer:** If you have any questions, there is a link to the Virginia Building Officials Association that you can go to, and we'll make sure we get you an answer.

- **Peace:** Very good. Thank you so much.

    - And now we will hear from Lisa Wallmeyer who has put together the matrix that's in your packet. I want to preface her presentation by just a brief report to the work group. It's probably no surprise to anyone that there have been a lot of public comments on this particular issue. There have been many, many calls to staff's office and to others. Staff has directed each person who has contacted the Housing Commission to contact their locality if there's a health or safety issue. And each caller was also advised to contact their legislator, Senate and House member, as well as a local official if necessary.

    - We extended invitations at each juncture for people to come and participate in these work group meetings and told them that written comment would be accepted. I believe we have at least one email that was inserted into the packet today.

- We've received a lot of emails as well as mailed letters in support and in opposition to the general concept. We've had 49 written letters. We've had them range from issues of taxation to use, which has been, obviously, a primary focus of all of ours. We have some gentlemen or other individuals here today who will speak at the public comment time as well to add onto their submitted written comment.

- I would say, generally speaking, the people who are in opposition of short-term rentals are people who live in quote/unquote neighborhoods, and they stress concerns over quality of life, safety, and property values. I think those are the themes that we've heard throughout, so we want to recognize those. And we appreciate all of the public comment that has been submitted to date.

- With all of that, everything's that been submitted, all the comments and other input from work group members, as well as any of those who may have been working on a parallel course along the way, those have been submitted via our request staff, by Elizabeth and Lisa. And so what you have before you is our best effort to compile all of that and provide questions. It reminds me [when I w]as a child of reading *Choose Your Own Adventure* books. I used to skip to the end and then work backwards. I'd end up on the most favorable position. Unfortunately, we can't do that today. Although maybe I started with my bill. We might end up there.

- So, thank you, Lisa, for all your hard work. We'll take your guidance as we go. Reserve your comments until the end. Thank you.

III. Bill Matrix Discussion

- **Logistics: Lisa Wallmeyer**, *Division of Legislative Services*: Thank you, Mr. Chairman. For those of you who don't me, I'm Lisa Wallmeyer. I'm an attorney at the Division of Legislative Services. I do not normally staff the Housing Commission. I was assigned to work on this draft legislation as it emerges. I was drawn into the Limited Lodging Act last year during session with Delegate Peace's bill and Senator Vogel's bill as they went through the Senate Finance Committee. I will continue to see them this year, I'm sure.

  - For those of you who I'm sure are very envious of my position of getting to draft this bill because it's a little light work for fun in an otherwise quiet time in the office, I do come at this from a nonpartisan position. I don't have a dog in this fight. Ms. Palen and I spoke with many stakeholders over the course of the past several weeks. I've tried to lay out the options and the issues that were presented to us in the course of the discussion. I've tried to lay them out in a way that is not giving any preference to any one position over the other, just to get the issues on the table of these are things that need to be resolved in a draft.

- As Delegate Peace mentioned, several of these things are sort of interconnected. So I had originally thought that I was going to try to put a draft bill out there with maybe in a couple of places a couple of different options where there was disagreement. It just became apparent that there were too many issues where a particular entity or group would say this is generally our position, but if this issue changes, then this is our position. So it was just too hard to put a draft out there with the options where you could sort of see that interconnectivity. So hopefully dealing within a matrix, just on an issue-by-issue perspective, you,--when you discuss--will be able to better bring in your positions of Well, we thought we were supporting Yes, but since we've already decided No on this other issue, Now our position is this over here.

- Again, I'm happy to answer any questions at the end, but I just want to give you a real high level of where I was on each of the issues before we get bogged down on any particular issue.

- The first thing that popped up in the course was just Is this legislation necessary? I think that that's actually probably an important thing to step back and think about before we get into the weeds of what legislation would entail.

- Those in favor of legislation see a need for standardization across the state to how these short-term rentals are treated, a need for standardization in tax collection, or just ensuring that taxes are collected centrally.

- Those who did not think there was a need for legislation thought the localities had all the tools in their tool belt that they needed to adequately enforce this to make locality-by-locality decisions as to whether this type of rental was right for their locality and felt like they had the ability to collect their taxes and provide my education about the collection of the taxes if that was an issue.

- I'm not weighing in on the veracity of either of those statements; those were just what was put out there.

- The second issue was the applicability of potential legislation. Senator Vogel's bill as passed would have applied to primary residences only, and Delegate Peace's bill as well. But as noted, the enactment clause does direct the work group to look at other types of property, whether they be secondary homes or bed and breakfasts or other things.

- I kind of grouped these into three different types of property that would be subject to discussion.

- The next very small issue in this discussion has to do with the local authority and the level of preemption that should take place in the bill. On the argument on the side that local authorities should not be preempted gets to the issue of the fact that localities generally have authority to regulate land use. Short-term rentals might change the nature of property, and localities should have the authority to act accordingly. The issue against is that the General Assembly has the authority

to step in when necessary and provide standardization and regulation. And this is one of those cases when if the General Assembly felt that it was in the best interest of the Commonwealth to step in and preempt this area then it has the authority to do that.

- I hope that as I parsed this out, I was clear what I was trying to do. If you drill down further on the "yes" side, then the next question would be if there is preemption, should the locality have the authority to require the people that use their property for rent to have insurance. I feel like in discussions there was some general agreement around that, that that was a fine requirement to have. It was reflected in the legislation. SB-416 allowed up to $500,000 of insurance. I feel like I heard a little bit of not rumbling, but maybe not everybody saying that they thought everybody was set on 500,000. So I don't know if that's a topic for discussion or if that was just people saying I'm not sure how everybody else feels.

- The other issue was should a locality have other specific grants of authority as it relates to the short-term rental? There were a couple different approaches taken in Delegate Peace's bill and in Senator Vogel's bill. Delegate Peace's bill as introduced had a list of optional local regulations saying although a locality can't prohibit this practice, it can put in place requirements relating to parking or occupancy or requirements to have working smoke detectors. There were a number of other things that were public safety, health, general nuisance—noise ordinances, that sort of thing.

- Senate Bill 416, Senator Vogel's bill, took a little bit different approach in the version that passed. There was just a general statement that even though local authority was preempted in the world of short-term rentals, that did not mean that ordinances of general applicability relating to noise, health, safety, parking, etc., would not apply to these rentals. So basically if you have a noise ordinance that says no loud noises after eleven, that's going to apply to a house regardless of whether it's the people in the property who own it, my brother house-sitting in it, or I've rented it out through an online platform.

- Another issue that came was related to business licenses or BPOL. Generally, the renting of property other than by a hotel, a boarding house, or a bed and breakfast is exempted from BPOL taxes. However, there is a provision that says if a locality had such an ordinance prior to 1974, they're grandfathered in. My understanding is there are about 24 localities that are grandfathered.

- So an issue has arisen as to one, if you're using short-term rental and you're in one of those grandfathered localities, when should BPOL kick in? Should it be the first time, the one family that goes out of town and rents their house once and that's all they ever do it? Or should there be a set number of rentals, a number of nights, amount of income? Should there be a trigger for when that would apply?

- It's also been brought to my attention that some localities that aren't grandfathered might be trying to say that this changes the nature of the home, that this is no longer a private rental, it's a business, and that some localities might be trying to impose BPOL even if they're not grandfathered. I don't have firsthand knowledge of this. This is all hearsay that I'm passing on to you, but it was brought to my attention that this could also be an issue. So this issue of whether BPOL needs to be clarified.

- Next, the question came up as to whether online hosting platforms are currently performing services and activities that would require them to be licensed under Virginia real estate law. I know that some of our work group members have been going back and forth in this discussion. I'm not going to pretend to be an expert on that, but that is an issue as to whether there would currently be requirements that a platform like Airbnb, Do they fit the definition of somebody conducting real estate activities?

- This issue, happily, is one of the easiest. There seems to be general agreement that this legislation would not supersede existing contracts. So that would mean that whether you as a tenant have a contract with your landlord that you will not sublet or further rent out your apartment, whether you have a homeowners association agreement, a community of common interest covenant, etc., across the board that would trump anything in this legislation.

- Next is the registration issue. Should a locality be allowed to require registration for persons offering property for short-term rental? One side of that is No, they shouldn't be allowed to do that. Then the second side of that, which gets a little more complicated, is Yes. And then the question becomes Should it be permissive that a locality *may* allow registration or should it be mandatory so that there's a statewide uniform system so that for a person who might for one weekend rent a home in Albemarle and then later in the year rent a home in Virginia Beach there would be similar standards. Excuse me; let me step back. If a person who owned multiple properties, maybe a primary home and a vacation home, if we have decided to include secondary homes and they're renting both, they would have the same registration process regardless of which locality they were in.

- I also made a note that if local authority to allow the short-term rentals is not preempted, and so you would have some localities who allowed it and some who didn't, then this issue of registration sort of breaks down to another level of obviously then you'd only require the registration in those localities that allow the rental.

- That gets to the next issue. If there is a registration, what should it look like? I think there was commonality across the board that the registration should be--I heard the term *ministerial* used. I heard the term *reasonable* used. But nowhere in the discussions did it come up that this should be a moneymaker for localities. It should just be to cover their costs. I know if you use the term *reasonable,* then

reasonable is in the eye of beholder. So that opens a whole other can of worms. But the issue is I didn't hear anybody say they were seeing this as a potential for localities to have a source of revenue per se.

- Then the question came up Should it just be as simple as name, your address, your contact information if you're renting your home? There were some groups that were proposing a tiered system, which I've sort of outlined here. Please note that the various elements I've put here were just things that were thrown out in conversation. This isn't set in stone, if you decide to go to a tiered system, here is exactly what it would look like. It just sort of gives you the idea of what was put there.

- Definitely in question was the number of days that would keep you in the, quote, de minimis category where you're really not doing anything substantial. I heard numbers thrown out from 14 days to 45 days to even more. So if you went this approach, that would definitely be an issue that would need to continue to be discussed.

- Also brought up what I think there was general agreement on—and again, I'm not trying to speak for anybody. So if I'm misspeaking about general agreement, please bring that up in the discussion/comment portion. But I think there was general agreement that you should be exempt from any registration process if you were already licensed in some way. That would mean if you were a property manager or a registered property manager renting out homes, you would not have to go reregister again under this process. If you were a hotel that already has a business license and is otherwise sort of accountable to the locality, you wouldn't have to register.

- The next issue is Should hosting platforms be able to collect and remit the state and local taxes centrally and remit them to the Department of Taxation? On the one hand, you could say No, that local taxes should be remitted to the locality not to the state. Or there's the argument that it would ease revenue collections, make it easier for the homeowner, etc., if the online platform could collect the taxes. Obviously, the Department of Tax would be the central point in the Commonwealth for collection or remittance of taxes.

- Because the bulk of these are local funds—the transient occupancy tax, the local portion of the sales tax—there was concern that if they're flowing through the Department of Tax they could somehow take on the character of being state revenues that the state could use.

- I spoke briefly with the Department of Tax. I think that we could take an approach that if we collect them and distribute them like we currently we do with the local sales tax, which is remitted to the Department of Tax with the state sales tax, that could alleviate some problems. That actually does not flow through the Appropriations Tax because it's immediately turned over to the individual localities' accounts. And to the best of my knowledge, there's never been an

attempt by the state in the appropriations process to try to grab that money. I'm not trying to put ideas in anybody's head. So, let's just say they can't and move on.

- I don't know how many of you are familiar with--in the transportation funding bills we did a couple years ago--we put what we have called a *kill switch* in those bills, that if any of those revenues were used for a purpose other than transportation, the bill goes *poof* and disappears. We could also fashion something like that here, that if the state ever tried to take any—borrow any--of these local moneys, that *poof*, the whole registration preemption, just the whole bill, would go away.

- There is also the issue of if we allowed for hosting platforms to register and collect the taxes, Should they be required to do it on a statewide basis or could they still pick and choose which localities they wish to collect and remit on behalf of? We're getting down to the end, I promise.

- There could be other issues; these are the big ones. I'm not trying to promise that this is an end-all/be-all collection of every issue that could arise. I think these are the major ones that would have to be decided before other nitty-gritty issues maybe got brought up.

- A question arose about confidentiality of tax information and who the information could be shared with. Both of the bills in the General Assembly session last year said that Tax could not share information that it received from a hosting platform with local taxing officials. This is a little different than our standard tax confidentiality provision that's found at 58-1.3. that establishes general confidentiality tax information, but the Department of Tax can share tax information with the relevant local taxing authorities. This would trump that and say Tax could not share this information with the local taxing authority. That's an issue to decide how you want 58-1.3 to apply.

- And then finally, Who can audit the information submitted by a hosting platform? Both of the bills from last session said that Tax could audit what the hosting platform submitted to it, but it couldn't drill down to individual taxpayers, and the localities would not have the authority to audit. Some questions arose in the course of our discussions. One was about transparency related to only Tax having the information. And the second one was concerns by the locality of being able to audit not individual taxpayers, but really to audit to make sure that they actually were getting the money back that they were due. For instance, if Tax was telling them they received taxes equivalent to 100 nights of stay last month in your locality, would a locality have the ability to audit and figure out that that actually was being correctly reported?

- That's it. I'm sure this will be an easy and quick discussion to follow, but I'm happy to answer any questions.

- **Peace:** Thank you, Lisa. We appreciate all of your hard work. I think what I'd like to do at this very early point of our discussion with questions and comments is see if there is first what I would call errors or omissions of this list that's been presented to us. Are there members of the work group who have been working throughout with each other, with others, who see that there's something missing, an issue that needs to be addressed that's missing in this compilation? Mr. Terry.

- **Eric Terry:** Eric Terry, Virginia Restaurant, Lodging & Travel. Lisa, thank you. Very nice job on this. I know this has been talked about in a number of jurisdictions. Was there any discussion about sort of the delisting process, any structure of noncompliance, and a structure of fines or anything like that?

- **Wallmeyer:** There were not concrete discussions. The only thing that came up—and I'm sorry that I might have skipped over this briefly—was that one of the issues with an online hosting platform being able to register with Tax was Should there be some prequalifying conditions before registration is accepted? And one of those things might be that they had a delisting process. Another issue that came up was that they had somebody who could be contacted 24/7. Those things would all be subject to discussion, what those criteria were. But that was the context in which this discussion came up. Fines were not discussed in any of the conversations that we had.

- **Peace:** Is there anyone else on errors or omissions? I will say that it's the consensus of the work group that this composite represents all issues that have been presented to staff and this work group that need to be considered by this work group. Mr. Mullen.

- **Mullen:** I'm not sure that it really needs to be in this matrix, but I'll just mention it as a backdrop to the matrix. The potential impact in certain respects of federal statutory and case law and sort of limitations on what states and localities can and can't require hosting platforms and Internet hosting platforms to do. Again, I don't know that it necessarily needs to be a part of this, but that is a backdrop issue that's relevant. Thank you.

- **Peace:** Thank you. Yes, Lisa.

- **Wallmeyer:** I had one more thing that I meant to add that isn't necessarily reflected in the matrix. I also in my other life staff a technology policy group. One of the things in drafting technology policy that we always try to keep in mind—I'm just throwing this out as food for thought, not to tell you what to do—is to try to remain technology neutral because technology changes faster than you can blink your eye.

    - One thing that jumped out at me in working through this is this bill is obviously very directed at using online hosting platforms. I think one thing to consider is Can the bill be broadened or should the bill be broadened to short-term rentals in general, regardless of whether I stand on a street corner shouting out like, "Hey, I got my house for rent. Do you want to come rent it?" Or whether you use an online platform, whether on your gym bulletin board you post a notice that people can tear off your phone number? So just something to ponder that at the

end of the day, if you draft something that's specific to the online hosting platform, there may be other means of somebody doing a short-term rental that aren't as prevalent and aren't as often, but just to keep in mind Should whatever you decide be applicable to all short-term rentals regardless of the platform?

- **Peace:** Thank you, Lisa. Yes, Delegate Knight.

- **Knight:** This kind of goes to what you were asking a while ago about federal preemptions. What requirements do the platforms have to the host to make sure that the localities are getting all the income? I'm not sure they issue 1099s. I would kind of wonder if—let's use Airbnb for example. If they've rented 10 homes in Virginia Beach for 10 days, how do we verify that so we know that we're getting our money back for tax purposes?

- **Peace:** The obligation to pay taxes is very much on the host. Part of what we're trying to accomplish with this discussion, Delegate Knight, is to come up with a situation in which it makes sense and it works for the hosting platform to collect and remit the taxes on their behalf. But fundamentally, currently under existing law, if nothing changed, the onus is on the taxpayer to pay the transient occupancy tax and sales and use tax as those apply.

- **Knight:** Mr. Chairman, that's kind of the crux of why I was asking that. If we know we have checks and balances on B&Bs and hotels for remitting taxes, if they're going to be in direct competition, I want to make sure there's a level playing field.

- **Terry:** Our bill was brought for the purpose of allowing a situation where it was cost-feasible for this particular hosting platform to collect and remit on behalf of its host because we see that as a good business thing to do and a good thing to do for the community.

- **Knight:** We may disagree a little on that. Yes, Erica Gordon.

- **Erica Gordon:** Mr. Chairman, just before we go too far down the road. With respect to the point that Eric was making and to the point that Edward was making, we feel strongly that the issue of enforcement should be added to this list. We feel strongly that if we're going to move forward with a registration system and talking about tax collection and remission, without any kind of enforcement mechanism there's really no point in talking about this. We've seen in other jurisdictions where there is no enforcement mechanism, no one complies with the law. So we think it's important that we have that discussion as well.

- **Peace:** Is it our concern, Ms. Gordon with Hilton Worldwide, that it be enforcement on the tax collection or the land use or both?

- **Gordon:** I think we need to have that discussion. I don't know the answer to that yet.

- **Peace:** Okay. Lisa.

- **Wallmeyer:** This just deals with one type of enforcement, but there were some penalties and some fines built into the legislation last year that dealt with enforcement on the tax collection side in terms of if a hosting platform registered. I think nobody brought that up as an issue. Perhaps I should have laid that out, but in my mind that was just part of the registration process that we carry forward. I think there are certainly other areas of enforcement that could be discussed. But I was not anticipating that that part of the fines and enforcement of the registration process would not be dropped; just nobody brought that up as having concerns with how that was structured or how that part was in place.

- **Peace:** I'm willing to be corrected, but the preference would be for a central point of collection. Mr. Haskins in the Tax Department presented on how that would work and how comfortable Tax would be with enforcement and verifying, to Delegate Knight's point, what was collected, whether it was accurate, and how it would be remitted.

- **Mullen:** This is Edward Mullen. I think it's important to distinguish between two different kinds of registration. I think the registration of the hosting platform for collection or remission of taxes was certainly presented in your bill and Senator Vogel's bill as a thing. And there were significant penalties if a hosting platform voluntarily registers for the collection or remission of tax—which is what it needs to do under federal—that it doesn't fundamentally owe. It can voluntarily get itself into that regime.

    - So our bill set up pretty significant penalties if they then failed to pay or underpaid or were fraudulent or something like that. That's to be distinguished from the sort of ministerial registration that the host would go through. And there could be any number of things that if a locality had ministerial registration for a host, some sort of basic permitting type thing or licensing thing, that's one and there could be enforcement that goes along with the host. Again, that's the case under existing law.

- **Peace:** I think what I'll say to your point of enforcement because obviously it's an issue is let's work through the matrix, and we'll have that as sort of a last point for consideration, if we can. And maybe we'll bring that up along the way in the alternative, in the context of the tax question and preemption. This is why all these things sort of start to interrelate. Mr. Menkes.

- **Neal Menkes:** Neal Menkes with VML. I was thinking about Delegate Knight's statement about the 1099s. [Inaudible.] Delegate Peace's bill of course addressed the use of 1900s. It doesn't make sense to think that Airbnb's going to be able to do withholding of personal income taxes. But I wondered at what point in time [inaudible] when these online platforms send out a 1099. It's not really an interest of local governments. It should be an interest to the state, particularly when there's a $1.5 million budget [inaudible].

- **Peace:** Okay. I think we're to the point of questions and comments of Lisa if we have any. Yes, Mr. Flynn.

- **Mark Flynn:** I'm not a member of the work groups per se. On page 3, should BPOL tax be clarified? Just sort of a question or maybe comment about the 24 localities that are exempt. Those are 24 that are exempt for long-term rental, I think, right? It doesn't address the issue of short-term rentals, if I understand correctly.

- **Wallmeyer:** Mr. Chairman. If I'm recalling correctly—and I don't have the statute in front of me, I can pull it up when I sit down—I think part of the issue is the existing BPOL. Because it's so old, it doesn't really distinguish. It just talks to rentals on private property versus hotels, boarding houses, and B&Bs. I think that's part of the confusion is to if you're grandfathered, what is grandfathered?

- **Flynn:** Mr. Chairman, if I may follow up. Under 37.03(c)(7) is the exception to business license tax. It says you simply can't do a BPOL tax on persons renting property, real estate. But then the long list that includes hotels, motels, boarding houses, trailer parks, campgrounds, B&Bs, lodging houses—what I'm saying then, I guess, is well, Yes, it probably does need to be clarified unless Airbnb is classified as one of those many things that still are open to business license taxation. But the assumption that that issue applies only on the 24, I think, is probably one I would disagree with. I think it's a question about How are Airbnbs going to be included in that list of things that have always been open to taxation for business licenses?

- **Peace:** Other questions or comments?

- **Maggie Ragon:** Mr. Chairman, Maggie Ragon with Commissioners of Revenue Association. I would back up the statement, the point that Mr. Flynn just made, that in terms of BPOL for short-term rental, localities across the state do consider the activities of online hosting platforms of hosts offering their residential property whether it's owner/occupied or otherwise, as a boarding house or lodging house. We all consider these operations to fall under that exception.

- **Peace:** Okay. Mr. Dicks.

- **Chip Dicks:** I would say that there is probably some disagreement here on the applicability of this. I think probably clarification would be the right approach.

- **Peace:** Okay. Are there further questions or comments of Lisa before we get into a step-by-step review of the matrix? Yes, Mr. Skiles.

- **David Skiles:** Lisa, I just have one question, and I've been looking through the Code to see where it might exist. I know in House Bill 2313 there's a kill switch on the state and local transportation dollars. Is there any other example in the Code where we have put a kill switch in place that you can think of?

- **Wallmeyer:** Mr. Chairman. No. I believe that was a unique creation of our transportation funding bills.

- **Skiles:** Okay, thank you.

- **Peace:** Are there any further questions or comments of Lisa? Okay. Very good. Well let's go through it. We'll start on page 1. We'll just take the temperature and see how we feel about these things. I think we'll reserve question 1 to sort of the back end because I think it's more important to get through the policy considerations. There are probably political or other special interests that influence decisions related to question 1 that may cloud our judgment. So let's start with number 1 in terms of applicability of legislation that *may* be recommended. Again, all of these things are in the hypothetical.

    - Primary residence only, primary residence and secondary rental homes, any residential property. So, the question is How narrow or how broad would you want potential legislation and its applicability?

- **Mullen:** Mr. Chairman, I'm happy to start. I should say I think we have had a number of really productive discussions over the course of the summer on a wide range of these issues. We've been happy to participate in them. But they really are tied together in a lot of respects. I think, as you know, my client's primary interest really was the primary residence situation in getting a relatively straightforward rules of the road for that at the state level and then also a collect-and-remit system. But I know that there are other stakeholders who have been really closely who are interested in, if we are going down this road at the state level, figuring out that it is for everything else. We've taken a couple of different thoughts on approaches to that. That tier system is one. That may not be the right one. But I guess from my perspective in terms of the priority, it remains the primary residence situation. But I'm certainly open, as other stakeholders might be, to looking broader than that.

- **Peace:** And Mr. Mullen, when you say "primary residence only," would that affect secondary residences or what we've heard termed as "illegal hotels" and the ability of a locality to regulate in that area?

- **Mullen:** When I talk about being focused on primary residences, it really relates to the rules that we set up under your bill, and the preemption, and then the collect-and-remit system, although that was broader than that. I think that the secondary and the multi-family, quote/unquote, that term you used, is an issue that others were interested in raising here, and I'm happy to try. I think the tier system is an attempt toward that again, maybe not the right one, but I'm certainly open to that in terms of priority, it's the primary residence.

- **Peace:** Senator Barker.

- **Senator George Barker:** Mr. Chair, George Barker, State Senate. If we focus it specifically on the primary residence, as was done with the legislation that we dealt with last year, what happens to these other two categories? Are they effectively covered in some other way at the state level? Are they effectively covered in other ways at the local level? Who makes those decisions?

- **Peace:** What do you think?

- **Barker:** I'm just looking for an answer here.

- **Peace:** Mr. Mullen.

- **Mullen:** Thank you, Mr. Chairman. Absent something, it would be up to local control. But again, I think the concept that you see represented in the tier system was sort of a multi-step process—some for all types of properties, some for primary residences only. So I think the default is local control.

- **Peace:** Senator Barker.

- **Barker:** Mr. Chair, if there's general agreement on what Mr. Mullen is saying, it seems to me that we should agree that if we do legislation that is specifically targeted at primary residences and how those would be implanted here that we make it explicit that the locality has the ability to regulate the other two categories.

- **Peace:** Mr. Mullen.

- **Mullen:** That's akin with some tweaks to what that tier system does. But again, I'll let others who are very interested in that secondary and multi-family properties speak to their interests there.

- **Peace:** Senator Barker has put an idea out on the table in response to the matrix question which asks whether it should be a primary residence only or primary and second rental home, any residential property. Is there any heartburn over the direction that Senator Baker has outlined as a response to this? Mr. Skiles.

- **Skiles:** Mr. Chairman, I know when we talked about this during session and a number of stakeholders in the room talked about this during session, one of the principal charges of this work group was to study this issue and how secondary rentals would be impacted. I think from my client's perspective—and I know Mr. Gordon, who couldn't join us today, certainly from his perspective there is an interest in pursuing some sort of statewide regulatory framework for non-owner-occupied, or in his case, multi-family dwellings.

    - I think when we're looking at doing something that is innovative and new, it's easy to say we could do it in a piecemeal approach. But I wonder if that's necessarily the best course of action. We've spent a lot of time discussing this legislation, both in this room and outside. So I think if we're going to be looking at this issue, we should study it from all angles, and we should look to put forward a bill that addresses the issues not only for primary residences, but also for secondary rentals.

    - I think if we do a primary bill this year, then we're going to be back next year talking about secondary rentals and maybe the year after that. So maybe this would lobbyist full-time employment act, but I would prefer it not be. Or maybe I do.

- So I just think that there are other stakeholders in this room. Obviously, Mr. Mullen pointed out that Airbnb cares greatly about primary residences. When you look at some of the companies my association represents, they cater to a different market. They cater to secondary rentals. Again, if we're going to look to do a statewide regulatory bill, we should do that, and we should address all of these different categories.

- **Peace:** Mr. Dicks.

- **Dicks:** On behalf of Brian Gordon with the Apartment Office Building Association, the Virginia Department of Management Association, and the Northern Virginia Apartment Association, all the apartment groups would like to have some vehicle for being able to rent through a hosting platform on a short-term basis for things like the [Presidential] Inauguration in Northern Virginia. They would like to look at vacant apartments and be able to use those in that circumstance.

    - Everybody on the multi-family side recognizes that the issues with primary residences are different from multi-family. There are different zoning requirements, different use requirements under the Building Code, as we heard from Ms. Hainer. The issues are different. But since we're in this discussion, then the thought process on the multi-family side was to address that issue, just as Mr. Skiles said.

- **Peace:** Would either of you have an objection to proceeding in a hypothetical manner in developing the framework for primary residential and reserving that coming back, if they are different, to bifurcating those two thought processes in this effort?

- **Dicks:** Mr. Chairman, I think that was the attempt, as Mr. Mullen said, on the tiers and the concept of that. But again, if the tiers are not the right approach—and I confess, I think I was the one who mentioned the tiers in the first place. What we were trying to do is recognize the difference in land use and safety and overall in single-family residences in single-family, detached neighborhoods versus those areas that were zoned multi-family intense, high-density type uses.

- **Peace:** Mr. Dicks, on page 5, we have the tier system that you're referring to.

- **Dicks:** Yes sir.

- **Peace:** Is that an accurate representation of the questions that all of you have had conversations about?

- **Dicks:** Chairman, I would say that it is. We were not able to build consensus on the various thresholds of days, but I think this represents a discussion of the tiered concept. And there were some objections to that, needless to say, from localities from the Virginia Association of Counties. We were not able to build consensus on the tiers.

- The concept was that under federal tax law, if somebody rents their property less than 14 days a year, it's not even treated as a rental property. So the concept was there are already existing provisions in the law that sort of establish these tiers. There's another provision existing in the Virginia Residential Landlord/Tenant Act that says that anybody who rents less than 30 days is subject to the transient occupancy tax. Corporate apartments and all those kinds of things are already covered under existing law.

- So in the tiered discussion, we had considerable discussion about it doesn't change the land use, less than 14 days. If my mother comes and visits for 14 days or I rent a room for 14 days, you don't really know the difference in the land use in that type of circumstance. Likewise, we were looking at some way we could build consensus on something that would take the tiers out.

- While I'm on this page, we also talked about real estate licensees were already registered. And we talked about whether localities wanted a registration requirement for properties that weren't already covered by some registration form—hotels, motels, whatever else. Likewise, a real estate licensee who's already registered and that property owner.

- So we were trying to build consensus on some circumstance where clearly the land use changes. At a certain point or a number of days per year the land use changes. Quite frankly, all of the enforcement tools of noise, parking, everything else, localities already have that ability. Anything that you'd say in legislation is simply that you're confirming existing authority in that regard that localities already have to regulate those kinds of societal type issues of noise complaints and whatnot at the local level.

- Taxation, leave that aside, but we were trying, again, to establish something we call de minimis and then something that was a limited version that maybe would require a special use permit. The real discussion and the tension, I guess, became over the special use permits because in some localities, special use permits require you to do extensive studies; they can be very expensive. In one locality, it's $27,500 for a special use permit. You can create all these scenarios where special use permits are basically a no for average people that want to engage in a short-term rental of some sort that would otherwise be permitted by the zoning.

- That was sort of the background. I know there are differing views on that, but that's a little bit of a summary of how we got to the tiered discussion. And we all agreed in tier 3 that at some point, this is basically a change in use and something that should be regulated by a special use permit or some other type of legislative decision of the governing body. That was basically the concept of that tier.

- **Peace:** And tier 1 de minimis, would it be a safe assumption, so say that it's less than 14 days? Is that where there was consensus or not—30 days?

- **Dicks:** There was no consensus, Mr. Chairman, I think it's fair to say on that. As Lisa put in the matrix, some said 14 days, some said I think 45 days, some said six months or whatever. I think that was the difficult part of building consensus about what that number was. The concept of de minimis was you wouldn't even know that somebody is renting or occupying a home.

    - There was also a discussion with localities to try to build consensus, which we were not able to do, about a discussion of home occupation. Most localities have a home occupation zoning scheme existing, so the question was whether we could fit some of this into the home occupation zoning approach. A lot of people work from their homes, and there's no change in land use and so on. But yet at the same time, at some point if a lot of cars come in and out, it starts affecting the neighborhood and there are complaints. And sort of going back to local zoning control, there might be some advantage to using a home occupation approach. But again, we weren't able to build consensus.

- **Peace:** Thank you, Mr. Dicks, for that. Mr. Mullen.

- **Mullen:** That was really the concept behind tier 2 was the sort of over-the-minimum threshold for primary residences only. What sort of things can you put on them? Home occupation is a really helpful summary. Home occupation to make sure that that increased use isn't adversely impacting your neighbors. The thought was the de minimis generally applicable ordinances will be sufficient. Once you get up over whatever that de minimis threshold is, then there may be other things that you need to put it on it again just in the primary residence situation. We weren't able to get there, but it makes sense, at least from my perspective, as a line of thinking.

- **Peace:** Mr. Rives.

- **Rives:** Mr. Chairman, Sterling Rives for VACO. I think one of the downsides of skipping over the first question, which is whether legislation is necessary at all, is that we quickly jumped into talking about the tiered approach without addressing what it is that we're trying to accomplish with this legislation.

    - I don't think that the case has been made—and if it has I have not heard it—for why short-term rentals should be treated differently from any other land use which is regulated by local government. As all of you know, the state system is that the state has delegated broad plenary authority to localities to regulate land use, and there's good reason for that. We have a very diverse state, and what might be appropriate in Wythe County might be appropriate only under conditions in Henrico County or in Fairfax County. So the state system has been to leave to the elected representatives of each community to decide what is appropriate, where, and under what conditions.

    - What I've not heard is why short-term rentals should be exempted from this local land use control and protection for residents of communities and all of the other land uses are not exempted. Why would we exempt short-term rentals and not

exempt lawyers' offices, for example, or any other home occupations or rental sales in a residential neighborhood?

- That's our first question. And not having heard that, VACO would respectfully suggest that no legislation is necessary if that legislation preempts local zoning authority or preempts the authority of localities to audit tax revenues or preempts the authority of localities to assure public safety either through Building Code enforcement of otherwise. So for localities, the emphasis is on protection of communities. And we're concerned with any legislation that says we cannot touch this, we can't regulate it, we can't require this use to be registration. Without those things, we don't think that localities can fulfill their mandate under state law and what our residents expect of us.

- **Peace**: Does VACO have a corresponding position with respect to collection of taxes?

- **Rives**: VACO thinks that we have the tools in place to collect the taxes now and to audit them. We're glad to have assistance in that regard, but not if it costs us local zoning control.

- **Peace**: Yes.

- **Menkes**: Mr. Chairman, Neal Menkes, VML. In answer to your last question, [inaudible], whether it's a B&B or hotel, those local transient occupancy taxes are collected and then remitted [inaudible].

- **Peace**: But not for Airbnb.

- **Menkes**: Correct.

- **Peace**: Okay, thank you. Mr. Terry.

- **Terry**: Thank you, Mr. Chair. Eric Terry with the Virginia Restaurant & Travel Association. One of the concerns with limiting it to the primary residence, as I think we shared earlier in this process, there was a study done by Penn State that showed that a big chunk of the revenues that were coming in to Airbnb were by the multi-unit operators and folks like that. If you don't include all residential property in that, I think you really kind of single out a large portion of what the potential revenue is, as well as ones that need to be registered.

  - On a second point with Mr. Rives' point, I do think that the difficulties of that registration, if you don't have the registration today, I agree, you have the ability to collect it. You just have to be able to identify who you're collecting from.

- **Rives:** We think we have that authority to require registration. Sterling Rives.

- **Peace:** To Mr. Rives' point, well articulated. Is it the position of the Hospitality & Travel Association that we do not need legislation?

- **Terry:** No, that is not our position.

- **Peace:** What is your position?

- **Terry:** We think the legislation is necessary to really create the transparency, a level playing field, and the taxation structure that is necessary.

- **Peace:** To the extent that Mr. Skiles is collateral to your industry, would you agree and share that on behalf of your client, the legislation necessary as now has been posed by Mr. Rives?

- **Skiles:** We certainly agree a regulatory framework is necessary. We should have one. I think there's disagreement on a variety of different components of that in terms of the secondary rentals and multi-family dwellings. But certainly agree that legislation is necessary.

- **Peace:** Ms. Gordon, as another collateral, you would share that same view?

- **Gordon:** Yes, we also agree legislation is necessary. Of course it depends what the final product looks like, but yes, we do agree a regulatory framework is necessary.

- **Peace:** Of course. This is the point of the hypothetical. Mr. Dicks, based on your prior comments of a tier system, which probably could be implemented only through legislation, you would also share the similar view that legislation would be necessary, subject to it being developed?

- **Dicks:** I would, Mr. Chairman. And at the appropriate time, I have a response to Mr. Rives' first question.

- **Peace:** I'm ready for that, if that's okay with you.

- **Dicks:** In terms of why somebody should be able to rent their property, the Virginia Association of Realtors looks at property rights as I've got a right to own my property, I've got a right to rent my property. I currently have a right to rent my property on a long-term basis, and there are no registration requirements by the locality, there are no special land use requirements, there are no special powers that localities are granted. I can rent my property for 12 months or six months or three months or whatever, and there's no power by the locality to come in and say that I can't do that.

    - We look at rentals across the board in terms of land use. As long as we're not changing the fundamental land use when we're renting our primary residence, we believe that our bundle of private property rights in Virginia gives us that right.

    - From that perspective, in terms of if I want to rent my property, for example, on a short-term basis, or three months or six months or whatever, the idea that the property owner would be required to go through a special use permit process is something that the Virginia Association of Realtors would vehemently object to.

- From our perspective, we look at this from a balancing standpoint and look at it from what rights the property owner should have to be able to rent. From that perspective, that's the reason we went down the road with the tiers. There's clearly a de minimis activity. If I engage in rental activity that's de minimis.

- When I get to a point, though, that I'm running a boarding house out of my house or I'm in this middle tier—middle tier was the most difficult one. The de minimis one, quite frankly, if it's 14 days or 30 days or whatever, using the existing statutory guidelines, again, that's not what is consensus around the stakeholder discussion, needless to say. But again, ask from a realtor perspective what that is, we see federal tax law at 14 days. We see short-term rentals already regulated at 30 days. Something below that in terms of days looks to us as a de minimis and looks to be part of our bundle of private property rights.

- The idea that if you leave it to the localities and the localities come back and say that anybody who rents their property has to go through a special use permit process, that we see as a problem.

- I hope that explains our position or our thought process.

- **Peace:** Thank you. Mr. Menkes.

- **Menkes:** I have two items. One is that the days Chip cited of 14 days, 30 days, all deal with taxes, not specifically with land use. I think that's important. Secondly, I would think that most localities would view [inaudible] right to rent property and recognize that there is a difference on a land use basis between short-term rentals, particularly when it's turning over constantly, versus somebody who stays for six months or 12 months or longer. Neighbors perceive a very big difference between long and short.

- **Peace:** Thank you. Ms. Trigiani.

- **Pia Trigiani:** I apologize for being late. But I would only add that if there are restrictive covenants recorded against the property that limit the term of the rental, that should also be given deference. And that often occurs, as we've spoken about before in prior meetings. But that's also important. That [inaudible] that the property owner owns is somewhat diminished by those restrictive covenants. Some would say a lot; some would say appropriately.

- **Peace:** We thank you for being part of the work group. And to your point, you previously presented such a general statement that does not supersede—or preempt, I should say—those contracts, I think it also articulated in this matrix, would be achieved best through legislation. Is that your position?

- **Trigiani:** I'm sorry. I'm not understanding.

- **Peace:** You would need legislation to carry that thought through if there—right?

- **Trigiani:** Yes. Where there is no limitation in the restrictive covenants, in the draft of the legislation that made its way ultimately through, there was a recognition of restrictive covenants, which we wouldn't support. But you're correct, for those that are silent, were the documents do not help, legislation would be helpful to address. And I think what Mr. Dicks just spoke to. What do you call it, tier?

- **Dicks:** Threshold, tier, whatever.

- **Trigiani:** Yes. I don't know what that is.

- **Peace:** Okay, thank you. Mr. Rives, you were trying to get back in the conversation.

- **Rives:** Yes. Thank you, Mr. Chair. I would agree that there's an obvious difference between a long-term rental and the impact on a neighborhood of continuous short-term rentals. With long-term rentals, whoever the renter is becomes a part of the community. He's a neighbor. People know who he is, know how to contact him. That person is highly motivated to get along with the rest of the community, just as we all do. Whereas with short-term rentals, these are people typically who are on vacation. They're visiting. They come, and they leave after two days or after a week.

    - So there is an inherent difference in the potential for impact on a community of short-term rentals. Now what is de minimis? I might agree with you that 14 days is de minimis, and it might be in some circumstances. But why should the state make that judgment and impose it on every locality in every circumstance? Fourteen days may not be de minimis in a townhouse community or in a condo. Fourteen days could be seven football weekends at UVA or Virginia Tech. And if you have people coming in for those specific occasions, that very well could have an impact on neighboring properties. So I think that should be left to localities to determine.

    - As for your earlier comment that some localities charge $27,000 for a conditional use permit, I can't imagine where that is. It's not Hanover. In Hanover, a special exception, which would govern a home occupation, for example, costs $750. Certainly that's not too much to ask. That basically pays the advertising requirement so that the public, the people who our elected officials are there to represent, have the opportunity to come out and express their views on this proposed use in their communities. And $750 is reasonable. Even for a conditional use permit, which goes to the Planning Commission and then to the Board, is only $1,500. So there may be some locality that for some type of conditional use permit charges $27,000, but I can't imagine who that would be.

- **Peace:** I think, Mr. Rives, you would appreciate that if there is an extremely high fee, that that would be a barrier in entry into this enterprise.

- **Rives:** It would be a barrier for entry into any enterprise. I'm opposed to unreasonable fees. Yes.

- **Peace:** I'm so glad that you said that. Thank you very much. Yes, Ms. Hagar.

- **Amy Hagar:** Amy Hager, Bed & Breakfast Association of Virginia. I agree that it should be all. I'm getting the calls from these Airbnb hosts asking, "What do I need to do right now? I don't understand. I just put my property online. That's all I do, right?" They're not seeing it as a commercial property, as a single home residence, duplex, whatever it may be. And to be honest, when you look at the diverse group of the Bed & Breakfast Association of Virginia, we have properties that are 12 structures with 17 different rooms, and then we have properties that are one-bedroom cottages in a single-standing facility. So I think that's the true definition of short-term lodging right there. And that's what we're discussing. So I really do think it should be all.

- **Peace:** Thank you very much. Yes, Ms. Ragon.

- **Ragon:** Thank you. Maggie Ragon from Commissioners of Revenue Association. In terms of the applicability of potential legislation, we do feel that it should apply to all residential property, specifically due to the difficulty in determining which hosts would be primary residents only and which hosts would be primary residents or secondary based on the fact that the previously proposed legislation specifically did not allow local tax authority the ability to determine which would be which. In other words, to audit the online platforms or the hosts in order to determine that difference. Thank you.

- **Peace:** Are there further comments or questions? I think we had been talking about tiers. We had a very good explanation of that. Mr. Rives asked us to reconsider what we had sort of passed by in terms of Is legislation needed? It seems as though there is consensus, with one strong objection from local government, that there may be need for legislation subject to the details, which obviously is what's the most important part.

    - We can go back, and then check that box, and go back toward where we were. Do you want to revisit the tier concept and try to narrow that down? I'm looking for some guidance from the work group. If we can't get further than where we are right now, then this may be the essence of what is recommended forward to the Commission, and then the commissioners will have to take up this question.

- **Delegate David Bulova:** David Bulova. Mr. Chairman, if I could, I wanted to go back to Chip and your discussion about registration and the tier system. I know that you had started off your comments with trepidation in general from the realtors about any kind of registration of rentals. But I think you held open that you could see the tiered system with that middle part.

    - Now I wanted to make sure I wasn't putting any words in your mouth that you indeed were open to a registration system. And if so, what kind of registration system were you envisioning? I saw the word in here, *ministerial*, which conjures that it's simply you fill out a piece of paper and you're registered, maybe with

some kind of nominal fee. But I wanted to get a better sense of where the realtors really were on all of this.

- **Dicks:** So Mr. Chairman and Delegate Bulova, I think that—again, we don't have a formal position because nobody's nailed any of this down. But I think the discussion and concept was that the registration requirement from localities' perspectives and from, I think, the lodging industry's perspective, and a number of stakeholders, was an important feature to making sure that the taxes were paid.

    - So our concept would be that it would go in Title 58.1 in the tax section and that there would be a provision, as there currently is, in 58.1-3294, I believe, for an owner of rental property to submit their financial information to the locality for purposes of determining real estate assessment. So there's already an existing provision in the code that deals with submitting that data.

    - So our thought process was that that section would obviously need amending if it was going to be used for a registration program under this bill. But our thought was that that would be the appropriate place.

    - The Realtor's concern has been for property registration, as Mr. Rives and I discussed in a previous work group meeting, for 25 or 30 years, opposed to a registration requirement. Real estate licensees are already registered for BPOL purposes. So the discussion among the various different stakeholders was that real estate licensees and the property owners that they represent would be exempt from any registration requirement, and the registration requirement would go into the tax code. That would provide for confidentiality to the taxpayer, needless to say, the host.

    - But yet at the same time, there would be some benefit to the locality of knowing that this is a rental property, a short-term rental, and that the registration fees would be, as Lisa said, reasonable and not designed to create departments or staffing or whatnot. They would be modest, if you would. Is the same sort of thing that's been done to the Building Code.

    - So that was the thought about registration.

- **Peace:** Delegate Bulova, did you have a comment or follow-up?

- **Bulova:** Yes, just a follow-up, and then it gets back to the question of whether we do primary residences and then primary residences and secondary rental homes. So if we stick with just a primary residence only, that keeps the realtors out altogether—correct?—because hypothetically, you wouldn't be using an Airbnb or a similar platform in order to be able to get those rentals. It's similar to the example we saw in Loudoun County, typical of what people think of the use where you're doing it a couple of weekends versus the person who clearly had multiple homes and was using it essentially as a real estate service for rentals.

- **Dicks:** Mr. Chairman, I would say to Delegate Bulova, that is generally correct. But if I have a single-family detached home and I rent it to Mr. Flynn, then Mr. Flynn within the approval—because most of the time he's not allowed to assign or sublease without the landlord's approval. If the tenant were allowed to do that, then under that circumstance, a real estate licensee may be involved in terms of managing the rental property, if you will, the single-family house for the owner. So under that circumstance, the exemption from registration would fall into play. But generally, I'm Chip Dicks, and I own my house, and I'm not dealing with a real estate licensee at that point. The exemption from registration would not be applicable in that circumstance, as you point out.

- **Bulova:** The registration concept came up at the end of last session. And it really is in response to localities saying—aa I understand it—we really just don't have a sense of where folks are. Mr. Dicks was up into Title 58.1. There was actually a provision that ended up in the final Vogel bill that allowed for a very simple ministerial registration requirement. I think Charlottesville has something like that that I think is pretty straightforward. Again, from our perspective, that's something that we can certainly talk about in the larger context of the legislation. But that concept was raised and has been raised at a number of different points, and it's certainly what we're willing to think through as part of the detail discussion.

- **Peace:** Mr. Menkes.

- **Menkes:** To tie in with the discussion on registration, I'll go back to what [inaudible] talked about at the very beginning. [Inaudible] reporting that enforcement, just submitting a piece of paper, [inaudible] address the locality's ability to assess what the impacts are.

- **Peace:** That's a fair point. Are there further comments about this subject—registration or tiers? Is there a preference on any of these? I'm hearing kind of all over the map on it.

    - How about tax? Is there any thought? I know Mr. Haskins can't have a position formally, but he's previously reported a comfort level that Tax has with a central point of collection and remission of the tax. Is there any thought from industry, local government? That is really who we'll be dealing with on that point.

- **Mark Haskins:** Mr. Chairman, Mark Haskins, Department of Taxation. As we've discussed before, the Department of Taxation believes that collecting the retail sales tax would be easier with one point of contact rather than going after 4,500 different hosts to collect the tax. We'd certainly be willing, with or without legislation, to try to pursue a centralized collection of the retail sales tax.

    - As far as the transient occupancy tax, a local tax, the department has no strong desire to collect local taxes. If it's the will of the Housing Commission and of the legislature that it's better collected centrally, we'd be glad to do it. Absent legislation directing us to collect TOT, we really are not looking for that.

- **Peace:** Okay, thank you. Mr. Mullen.

- **Mullen:** Mr. Chairman, Edward Mullen with Reed Smith. No surprise at all. Centralized collection is a big key component of the legislation from our perspective. Airbnb sees great merit and very much wants to help localities and help the state by collecting and remitting taxes on behalf of hosts. There's a sort of calculus that goes into engaging, from a regulatory standpoint, with locality by locality and being audited and all those sorts of things. That's why we took the approach of the state level collection and remission.

    - We spent a lot of time working on it, ironing out the details, thinking about how it would be done and how localities would be protected. And at the time, the hosting platform and host would be protected. Candidly, we think that we came on this front with a pretty good compromise in the legislation, and that's certainly the avenue that we hope we'd see pursued. Thank you.

- **Peace:** Ms. Ragon, this is your area of expertise.

- **Ragon:** Right. I don't think I've made any secret of the fact that localities would like to keep the transient occupancy tax within the authority of the locality. And we'd love to get to be really good friends with Airbnb, all 132 of us.

- **Peace:** Thank you. Senator Barker.

- **Barker:** Mr. Chair, I do see a significant benefit to having a single tax collection source here. I think that certainly would work well. Right now, we have large numbers of people providing this service not paying any of those taxes. I think this is an opportunity to try to make sense out of that system.

- **Peace:** And to that end, since we've talked about registration, would it have that registration component? I'm looking at the matrix on page 6. If we want to say Yes to that question, at least staff has us answering one of two other questions. Maybe you're not prepared to say on that. I don't want to put you on the spot. But to the rest of the work group is there—Mr. Terry.

- **Terry:** Eric Terry, Virginia Restaurant, Lodging & Travel. Again, depending on the preference, we certainly see the benefit of the statewide. But it does have to come with some sort of registration so that there is local auditability by the local jurisdictions. I don't know how else you can kind of look at all the other requirements. You really have to have something for local authorities to be able to go in and audit and determine whether or not it complies with whatever they implement locally. So I think that registration has to be there from day one.

- **Peace:** I see Ms. Gordon shaking her head. I think you're shaking your head; correct me if I'm wrong. Because that relates to your original point of sort of enforcement. Is that right?

- **Gordon**: Correct, yes. I agree with Eric on that point. Thanks.

- **Peace:** Sure. Other thoughts on that? Lisa said she's doing this 30,000-foot report with this matrix high level. So that's where we are, high level. I think we're sort of hearing some common points. Going back to Mr. Dicks' description of the tier. The details are where people get off in divergent views. Mr. Menkes, you want to correct me, but go ahead.

- **Menkes:** Neal Menkes with VML. One of the questions is on the matrix. Whether in agreement between an online platform [inaudible] or anyone else of whether it would apply statewide or just in specific localities. Such agreement—I think Mark Haskins would agree—would be kept confidential. It would be somewhat confusing at the local level. And we may not know which localities [inaudible] the agreement, which localities would fit under subsequently amended agreements. That's tough for us trying to keep track of the money if we don't know who's being [inaudible] the agreement between the online platform and the Department of Taxation.

- **Peace:** Mr. Menkes, implied in that statement is an inherent distrust of the Virginia Tax Department, which I know does a very, very good job. And the software is truly reliable.

- **Haskins:** Thank you, Mr. Chairman.

- **Peace:** Mr. Haskins, for all disclaimer purposes, lives in my district and does a great job.

- **Haskins:** Mr. Chairman, we've had several discussions back and forth over this. As far as Mr. Menkes' point as far as knowing which localities. We have had discussions that the Department of Taxation would maintain a publically available database to show which localities have agreed to centrally collect the tax and report it to the department. So that should be out there. It would also include the rates and a process whereby we would update the rates based upon information from the localities. So this is an issue we've been addressing. And we believe that we'd provide the localities the information they need, if that's the way we go.

- **Peace:** Mr. Mullen.

- **Mullen:** I think that's exactly right. It's certainly the goal of my client to collect and remit for every locality where we have hosts. The reason the permission language is in there is for a couple of reasons, not least of which is we haven't gone through every locality—county, city, town, sort of down the line—to see what their transient occupancy tax looks like and to make sure that we could collect it. There are a couple of oddball rules that exist in other states. We don't know if they exist here. Like the TOT doesn't apply until the third day or something like that that we don't know if we could implement or not.

- Certainly the goal is to do it for everybody. And I think the things that we talked about in our working group was having a schedule that shows what localities are being collected, what rate is being applied, localities having access to that so that they could say Hey, that's not our rate, we just changed that, or so on and so forth. So I think there are fixes to that particular transparency issue.

- And I would caution on staying away from mandates, however. I think that could get complicated under federal law. And if there were a town in the middle of nowhere that had an oddball provision and you couldn't collect for it, that might result in your not being able to collect for the whole state. Thank you.

- **Bulova:** Mr. Chairman. If I could just throw this out. Mostly, I'm trying to get a reaction from Mr. Mullen because it's fun to watch his face. Actually, very, very serious.

  - With regard to a single point of collection for the taxes, it's a convenience, hypothetically or potentially, for local governments. It's also a very valuable service that you provide to your hosts because it keeps them from getting catawampus with local officials. So you have that point there.

  - Then you have kind of the enforcement part. I guess the enforcement is already being done at the local level. The issue is once that is collected, how do you know that you can match that up with somebody at the local level? So having some ministerial registration helps to do that. If you were to just do a point of collection—you collect, you send it back to the local governments. The local governments know who's registered, who's not. And then they can go about using their existing enforcement mechanisms to do that. Leave all the rest of this zoning and local stuff out of the equation because I think that's where a lot of people are getting tripped up.

  - What are your thoughts about a much more streamlined process like that that would keep us from tripping up on a lot of other details?

- **Peace:** Mr. Mullen, before you answer, I'm going to give you 30 more seconds to digest that. Page 7 is sort of a natural evolution to the conversation about the central point of collect. And I think we've heard the industry's perspective on that. But as an addendum to Mr. Bulova's question, in your response I think speak to those elements too. I think that the registration and transparency and what Tax said in response to Mr. Menkes' point also relate to these questions. So if we can kind of sandwich all of that together in your response, that may be helpful.

- **Mullen:** I'll do my best. I'll start with your question. I think as it relates to the tax piece, I think there's some merit in that. You have the centralized point of collection. Everybody knows what rate is being applied, what's being charged, we have stepping into the shoes of the taxpayer, so we are the taxpayer liable and all on down the line and are subject to audit. But at the same time, there is ministerial registration at the local level. So there is the ability, at least in theory if this all happened that way, where

the locality could go to Chip and say Show me your host manifest or your note from Airbnb that says that we are collecting and remitting on your behalf. So there's merit in that.

  - I obviously see the whole picture as a very relevant one for my client and for the host that it represents. I think the use issues and being able to exercise your property rights in a reasonable way in a way that doesn't impact your neighbors negatively is an important thing. So, no, I really do see all of these things together. Obviously, there are two main component parts from the tax perspective and from the short-term rental and inventory perspective.

- **Bulova:** Mr. Chairman, if I could. And I hate to cut you off.

- **Mullen:** I'm glad you did.

- **Bulova:** You can do glass half empty, glass half full. So I guess my question is Would you see merit in a bill that just did that? I know Airbnb would like to go further, but do you see merit in a bill that just did what you described?

- **Mullen:** I don't know whether a hosting platform would voluntarily come on for that if there were not sort of uniformity in the rules of the road across the locality. Where they've done that at the large municipal level around the country, it's come. You've done the collect-and-remit piece part and parcel with the sort of here's what the rules are. We're doing a different thing. It's a different thing at the state level to do that. So the honest answer is I don't know how they would see that. I know my counsel is to do both.

- **Peace:** And to my question then. If it is part and parcel, speak to page 7. The confidentiality and auditing, which are similar to what we've discussed.

- **Mullen:** Sure. As I stated, the bill that we spent a lot of time working on with the Tax Department tries to walk the line between making sure that we the taxpayer—because that's what we're biting off. When we register for a locality, we become the taxpayer. Can be liable and can be audited, by the auditor in this case, the Tax Department. But also that the identity of our hosts are protected. They are at least as to our disclosing them. Obviously, with a registration provision that would be a mandate on them. From our perspective, our disclosing them is not something we want to do. So that confidentiality is really an important thing. But again, as to who's getting paid and making sure that the payments are right, I think Tax feels very comfortable with the audit provision.

- **Peace:** So it would be your position that registration would go a long way toward that. Is that accurate?

- **Mullen:** Yes.

- **Peace:** You're here with Airbnb, but there are others that perform this service. And any structure that's created, if it is, would apply equally to all platforms.

- **Mullen:** Yes, Mr. Chairman. And the way your legislation was set up, you didn't get the benefit of some of the uniform rules of the road unless you were paying taxes either individually as a host or a hosting platform. So it would really be incumbent on these other providers, if they wanted the positive benefits, whatever they may be, of this legislation to come register with the Tax Department and take those sorts of things on.

- **Peace:** Mr. Rives.

- **Rives:** Thank you, Mr. Chairman. Mr. Mullen's comments he just made about the desire for confidentiality, it seems to me that for local governments to know who is renting out their property for short-term rentals and how often they're doing it tie in directly to the enforcement issue that Ms. Gordon raised at the beginning of the meeting. If you were to adopt a tiered approach, how would local governments have any idea which properties are being rented out, whether they fall into what Mr. Dicks calls the de minimis category of less than 14 days, or the intermediate category, or the other? I don't understand the desire for secrecy and why the names of the people who are renting out their houses need to be kept secret from the local government or from the Commissioner of Revenue in this age of transparency.

    - I think every other business person recognizes that registration is a reasonable thing. Businesses routinely file tax returns with the state and with local governments. They list their machinery and tools. Why should this use be treated differently? What's going on that has to be kept secret?

- **Mullen:** Mr. Mullen. From a hosting platform's perspective, there are federal limitations on what we can disclose about the identity of the hosts that we have.

- **Rives:** But that's not the question. The question is Why can't the people who own and operate these houses that they're renting out report that to the localities?

- **Mullen:** One of the things that we've been discussing today is a ministerial registration provision whereby individuals who are hosting would register with the locality.

- **Peace:** It may be semantics. We'll address that on side. Mr. Terry.

    - **Terry:** Help me a little bit in terms of the disclosure. I'm actually kind of reading from a statement, I guess, that you all had in China where you have an agreement with them. It says, "Like hotels and other businesses operating in China, Airbnb China has to comply with all local laws and regulations including privacy and information disclosure laws, and may be required by Chinese government agencies to disclose information." And then I also understand you

guys have a recent agreement with Delta for their frequent flier program and whatnot.

- Seems like there's a lot of disclosure going on there. Seems like there's a lot of disclosure going on there, so why wouldn't Virginia be the same? Why would we be different than China and/or Delta Airlines?

- **Mullen:** I think Chinese federal law is probably different from U.S. federal law in certain respects. So it probably limits things a little bit differently and maybe requires things a little bit differently. U.S. law on this point I think limits what hosting platforms can disclose about their hosts. But, back to your point. Mandates on individual hosts to do so is a little different.

- **Peace:** Yes, Mr. Menkes.

- **Menkes:** Listening to this discussion, I wonder whether we're going to end up with something that's even more confusing than what is in place right now. Let's take Hanover County, for example, in which you use Airbnb when you rent something out and Sterling doesn't. What we end up with is two different processes for which we track the use of the properties and track the taxing and the auditing and regulating. That's within the same jurisdiction. And of course you have general perhaps confusion about citizens in that locality A is included in an agreement but locality B isn't. But citizens in B might be confused whether this applies to them or not. I think we need to be very careful whether the proposed solution ends up causing more unintended [inaudible].

- **Peace:** I'm sure. That's 3,000 bills that are filed during the General Assembly session. I guess if you would answer a question for me. If I recall, before I was even introduced to this issue—and I've never stayed at one of these things—there were several requests from local governments—primarily municipal governments who haven't even passed resolutions—asking the General Assembly to set forth uniform statewide guidelines. So are you saying that your membership now has reconsidered that after seeing what has been proposed and not liking it?

  - **Menkes:** Actually, our position for the last three years has been that—and it's general in regards to the use of the digital [inaudible] if the state decides to act on a specific issue, for example, TNCs (Transportation Network Companies) or an Airbnb, that localities have a role to play in the development of that policy. That's been fairly consistent over these last three years. What we've actually been advising localities now is that to go ahead if they're so interested in promulgating an ordinance to do so.

- **Peace:** I would just say as a follow-up, I appreciate your candor. Once that happens to its fullest extent, we're going to be right back here because that is what the Dillon Rule and all of our other constructs of the Commonwealth are designed to prevent, which is a first sort of objection to tapestry effect. We want uniformity for the purposes of business. So I appreciate what you're saying. I think what we're liking to

do is when we have a choice in the matter. How can we outline and set forward a proper policy? Thank you.

- **Menkes:** With all due respect, Mr. Chairman, I would think that many localities would say that they already have the authority invested to them by the General Assembly to [inaudible]. But I understand that we're all confused.

- **Peace:** Yes. Proffers are like that too. Anyone else? Yes, Senator Barker.

- **Barker:** Let me chime in on a few things here. I think there is some merit to at least establishing some general guidelines and limitations at the state level in terms of how we operate here. We have 130-some-odd cities and counties and I don't know how many towns. You could end up with a situation--and I just think to some extent that's part of the reason we don't have a functioning system right now--where it's very, very different and conceivably could be handled in very different ways in different places.

    - I think there is a certain benefit to having some statewide construct here to help implement things here. I think the opportunity for a de minimis registration type of thing that is referred to as ministerial here rather than punitive at the local level provides the opportunity for having an ability to track who is out there and to have a system whereby if you find out somebody hasn't registered, you at least have some ability to try to tackle that situation. That at least gives you some opportunity to try to address the issue on enforcement.

    - If you have that, it seems to me it clearly makes sense and provides significant benefits in a broad spectrum for being able to collect the taxes on a statewide basis. For being able to have the option for collecting those transient occupancy taxes, those types of things. So I think there is some benefit, if we could all just sort of not operate from a perspective of sort of What do we fear?, but try to operate from a perspective of What can we accomplish here that makes sense from a broad perspective and protects the rights of the citizens, protects the rights of opportunity and businesses in these situations? But it also provides some protection for the residents and localities.

    - I can tell you, having rented houses in the past before we built our own house, the people who were previously renting those houses did not always keep them up very well and probably were much worse than an owner would have been in many of those situations. So it's not a situation where a renter of a property I house now is automatically going to behave the same way that someone who owns the house is going to behave. This is sort of heading in a different direction here, and I think there's a legitimate distinction between someone who rents their house out in limited situations versus someone who's sort of using it for a commercial venture.

    - So I think the types of the things that we're going about in the tiers makes sense to look at here. And I think it makes sense for us to try to resolve those as best we can rather than just sort of punt it down the road and say we're not going to

deal with those. I think if we do that, we're likely to end up with more questions and more concerns in the long run rather than trying to reach consensus on things. And if we do it from a perspective of trying to figure out how can we help everybody in this process, I think we actually can reach agreement on several things here.

- **Peace:** All right. I think you said it well. The question is whether the work group can express its sense along the same lines that you've articulated. We can take a pause on that, have public comment, if you'd like. We've been here two hours. I appreciate the vigorous discussion. At this point, we'll take public comment. You've all been listening to this conversation as well, and I hope that you're able to come forward. We're recognizing three minutes per speaker. Yes, Mr. Bradshaw.

- **Bradshaw:** If I could jump in, do you want to address page 2? We'd like to make this easy on the taskforce and just say leave insurance completely out of it. The insurance industry, as Ms. Hager said, everybody and their brother, from small to medium to large to even marine are getting involved in this. And so it's an individual question. And so let the industry handle that based on the needs of the consumers.

- **Peace:** Personally, I tend to agree with that position. I know that you had issued a letter to the work group and the Commission along those same lines. I think without objection we can just sayYes to that and move forward, getting you out of Dodge. I don't know if you have an appointment to get to or not, but at any rate.

- **Bradshaw:** Let that not be construed that we want to sell insurance.

IV. Public Comment

- **Peace:** I appreciate that. All right. Let's have some public comment. If you are here and if you've traveled to come offer your thoughts to this work group, we certainly would invite you to come to the lectern and offer those comments. I will be keeping a watch on the time, three minutes per individual. I think there's a sign-up sheet. If you're on the sheet, great. I don't have it. You step up, tell me your name, and who you're representing, and we'll go forward from there. Please.

- **Blake Ratcliff:** I'm Blake Ratcliff. I'm an Airbnb host.

- **Peace:** Thank you.Go ahead.

- **Ratcliff:** Delegate Peace, thank you for this opportunity. In July, you raised questions about what is really meant by preserving community standards and retaining community character.

    - We've endured hate, harassment, and public shaming after hosting people of color in our home. Whether they were Airbnb guests or personal friends, our home has long been used for entertaining guests. The previous owners moved out of the upstairs so they could host 50 bluegrass concerts, each attended by 100

white strangers from all over DC. No one complained about noise, cars, strangers.

- Imagine our shock when one of the neighbors your work group heard a presentation from in July led a door-to-door campaign against us after we hosted an African American family's annual family reunion. They filed a complaint with the HOA having never said a word to us. After my son hosted a spring break party, including African Americans, this same neighbor complained at the March HOA board about security and Airbnb. We hadn't hosted an Airbnb guest for four months. During late March, April, and early May, we had only white guests. None of my neighbors appeared at the April or May HOA board meetings to complain. Eight days after we hosted black professionals in town for a Memorial Day festival, though, 10 neighbors, including three from your July hearing, complained at the June board meeting, led by a neighbor who cannot see my home from her property, only the color of the people driving by in their cars.

- One of your July presenters complained the Airbnb guests brought casseroles, suggesting that Airbnb guests don't invest in the community. She was referring to a family that was burying their son at Arlington Cemetery. Friends brought casseroles when paying their respects.

- Likewise, each of the July presenters made exaggerated claims of daily rentals when they know I live in my home full time. This is my only residence. Unfortunately, they will say anything. They have worked dishonestly. They convinced our HOA to issue cease-and-desist letters, defying the General Assembly's Homeowner's Bill of Right. In September, they convinced Fairfax County to adjust decades-old treatment of short-term rentals.

- Airbnb has been a lifeline for my family and me. With three kids in college, I lost my job right after we purchased our home. The job I have now does match my previous salary. We rent weekends when we travel to see the kids, about four days a month.

- In closing, Delegate Peace, you said it best at the July work group. I hope that we as Virginians would not endorse a system of laws or rules or otherwise allow that type of discrimination to continue. Please don't codify prejudice. Thank you.

- **Peace:** Thank you, sir. If you could provide a copy of your written comments to staff—oh, she already has it. Thank you very much. Is there anyone else who would like to address the work group?

- **Marcus Jackson:** Hi folks. My name is Marcus Jackson. I'm a resident of Reston, Virginia, in Fairfax County. We have, unfortunately, the flip side of horror on our side.

  - My wife and I moved to Reston because we were looking for a community. We wanted a place where we could raise our kids, they could play outside, they could

participate, we could be supportive and supported by our community. We found that. We found all that and more. We drove up here in a car that is covered with our kids' team stickers. It's exactly the kind of place that we wanted to be. A real community. I could show the pictures of our Halloween party this week, but we don't have time.

- In November of last year, a house on our street was purchased by a gentleman who had the express purpose of hosting an Airbnb. He lives in the house. He lives in a room in the basement. All of the upstairs rooms have been for rent, $35 a night, ever since. This created our issues around the community in who was around and so on.

- But it really became an issue when we realized that the daughter of our neighbor had been pursued and harassed by one of the guests. This gentleman who is the host did nothing to help the police when we called them. The police, by the way, had no idea that this was going on, that the property was being rented, which I think presents another set of issues.

- Once we began investigating this as a community—and when I say *community*, this is a street, this is a cul-de-sac of 17 houses. We all know each other. This is not the broader sense of community. I'm not talking about Reston in general. I'm talking about my street, my neighborhood. We began investigating to see what is going on, where is this coming from. Found the property listed on Airbnb and realized that this gentleman was touting the tight-knit community, the kid-friendly environment as a selling point of his room-by-room rental.

- We did the math on that, and what we realized was Hey, you know what? If you are advertising $35 a night in a child-friendly neighborhood, you might not get the right element. If you're fishing with kids as bait, you get the wrong thing.

- So we said Okay, what can we do here? We talked to police; they didn't have very much power. We said Well, we live in Reston; we're going to go to the Reston Association. We engaged them. We got them on our side. We engaged Fairfax County; they're on our side. We're not zoned for bed and breakfasts without a permit. We said Great, we're in a good position here. Our local government's responding to us. And we learned about this bill. We learned that despite our best efforts to engage our local government and do things at the level that seemed to make sense to us, we could be in a position where it doesn't matter, where we still have to deal with this man because the state has imposed one regulation for all.

- That's not the way our state works. What works in Virginia Beach may not work in Fairfax, may not work in Blacksburg. We're all very different communities. To even say that what works on my street would work a mile away at Reston Town Center is ridiculous. It should be a local issue.

- Deciding whether or not someone has the ability to rent and how much and how long is a tough thing. If you look at the tiers as they're currently proposed, this is a gentleman who doesn't really fit into any of them. He doesn't fit into tier 1 because he has rented his house for many days. We have records. He has at least 35 reviews. We've counted days of multiple cars at his house from different states throughout this entire period. If you look at tier 2, well yeah, he resides there, but he doesn't rent out to one person. He's essentially running a boarding house. But he lives there, so he's not tier 3.

- The point here is that this is not an issue that makes sense to specify here at that level. We should be, as a locality, able to say this doesn't make sense in this area, but it does make sense over here. That's the big thing I would like you to take away from this. Thank you very much.

- **Peace:** Thank you. Is there anyone else?

- **Male:** Mr. Chairman, can I just make one editorial comment? Other folks that have participated in these discussions could correct me if I'm wrong. The gentleman raised an interesting point. Tier 3 probably could have been outlined better here, but for individuals who rent their home out continually, they would be under the tier 3 description. So here it says vacation homes, multi-unit buildings. But I think to the gentleman's point—obviously not knowing the specific circumstances—that individual could fall under the tier 3 category, which would essentially be the status quo. I just wanted to make that known.

- **Peace:** Thank you very much. Yes sir. Please state your name.

- **Jay Billie:** Thank you, Mr. Chairman. My name is Jay Billie. I'm the owner and operator of a bed and breakfast in Orange, Virginia, called the Inn at Westwood Farm. I do it along with my wife.

  - I just have to say that the regulatory and tax-related issues that you have before you and have been working on really have less to do with short-term lodging and really more to do with the sharing economy. And how to regulate it or not regulate it should serve as a blueprint for the sharing economy as a whole as you go forward.

  - The emerging economy trend will not stop at taxicab services and the short-term rental, and it will evolve into other services that will butt up against other established businesses in the very near future. What are you going to do with sites called TaskRabbit and Care.com and Upwork that have taken freelance marketing to a new level? Upwork specializes in helping more traditional freelances. Care.com specializes in the caregivers for children as well as the elderly.

  - What are you going to do with companies that provide co-working spaces like Wework.com? What about Uber? What are you going to do with services like

Getaround.com that enables individuals to share their cars with neighbors? Or what about drivers who offer wine tours while limo drivers need licenses? What are you going to do with Lending Club that allows people to lend money to one another? And also how about NeighborGoods and similar sites that allow people to borrow resources like power tools, woodworking equipment, and kitchen appliances to their neighbors? What are you going to do about in-home dining sites like Feastly.com where everybody who cooks in their kitchens go on without any vetting process whatsoever?

- Not all of these services are available just yet, but they will arrive. Can you imagine going through this entire process again with the restaurant industry, the bank industry, the trucking industry, the commercial lending industry, the employment agency industry, and so forth and so on? So it's imperative that you look at the entire picture and have a clear and consistent strategy along all industries.

- The growth of the short-term rental market is actually remarkable. I heard the gentleman over here indicate that there were 45 units available, 4,500 units in Virginia. Well actually per AirDNA, as of yesterday there were 8,500 units available. So that would be a 90 percent growth rate in just 10 months. If those 8,500 units operated at a low 20 percent occupancy rate for 73 nights a year at an average cost of $100, that's $62 million a year, and that's probably being extremely conservative. There is no sales tax being taken, no transient occupancy tax taken. And in most cases, a lot of the personal income tax is not being withheld or even paid.

- These unregulated hosts can talk until they're blue in the face about their property rights. But when they're not paying all these taxes and legal, regulated businesses such as bed and breakfasts and hotels offering the same exact service are, it's an injustice that must be addressed quickly.

- In our home county of Orange alone, there are 180 rooms available in the 12 legal hotel and registered bed and breakfasts and inns. In the same county, there are over 100 rooms, one-third of all the available rooms in 50 facilities advertised on Airbnb with a new listing coming on every month as of January 2015. And it is still growing. Not only is it eroding the businesses of the existing establishments, some of the Airbnb properties are branching out hosting weddings and special events.

- The other point that really needs to be emphasized is that Airbnb hosts are true entrepreneurs in this economy. And I applaud them. They have allegiance to Airbnb not so much because it just generates bookings, but their website protects them from regulation and tax collectors, which allows them to operate with less overhead and oversight than a regular business. It would be foolish to think that if Airbnb started to collect taxes, these entrepreneurial spirits and hosts would just go along with it. A good portion of these hosts will be moving to another website that is not registered with the Commonwealth. After all, about 30 or 40

of these websites exist, offering the same service as Airbnb. In this scenario, the state would be playing whack-a-mole trying to collect taxes from all the other websites.

- The answer is really to have the local jurisdictions handle this growing economy by regulating, inspecting, registering, and taxing each facility that offers accommodations for compensation. The big elephant in the room is, of course, enforcement. And you need to give the local jurisdictions the ability to fine these unregistered businesses with financial penalties. If Airbnb truly would like to help, they could notify the host to come forward and register within a certain grace period. Afterwards, if the facility is not registered, penalties and fines will apply. This has worked well in some foreign cities like Berlin and Madrid.

- Also, the state should do everything it can to simplify the process of opening a business with a new online portal specifically for sharing economy workers. These people want to earn money, but they are confused by the process. Having gone through it myself, it's not that complicated, but it does need to be streamlined. The IRS has recently started a new webpage to provide information for those working in the sharing economy to ensure that they do not run into tax problems. Virginia should also be out in front of this.

- The end result will be new business startups will increase. The hosts will run their enterprise like a business. A sharing economy strategy that applies to all industries will be adopted. All taxes will be paid. Guests will be able to enjoy their stay in a safe environment. Local jurisdictions will maintain control over their neighborhoods. And a level playing field will be maintained. Thank you.

- **Peace:** Thank you very much. Welcome back.

- **Jack North:** My name is Jack North. My wife and I own Mayhurst Inn in Orange, Virginia. By the way, we are both a legal B&B and an Airbnb host. Yes, it's a real pleasure to be back, guys.

  - At the last meeting, thanks to the IRS, I think we'll be able to help you resolve two critical issues. One is defining *occasional use*. They kind of did that for you. It's something less than 15 days. I'm not quite sure why you put 45 in the matrix just to confuse everybody. But, hey, whatever you want to do.

  - It also seems that the committee is struggling with some of the right terminology to use in the revised bill. I saw that in the matrix. The hundreds of legal B&Bs in Virginia are happy to give you some help, especially since we're going to get covered by the exact same regulation. We're in the same business; we do the same thing. And we want to make especially sure that it is fair and just for everybody and, as I think Lisa stated, standardized for everybody.

  - The revised legislation should include some of the following things. And by the way, this dovetails very nicely with what you have in the matrix.

- Require registration as a business for any facility that provides accommodations for 15 days or more per year for compensation in Virginia. That's what we are; we're all businesses. Again, this follows the IRS lead. They call them businesses. And it uses their same 15-day timeframe.

- Require full and open transparent identification of every Virginia facility listed on Airbnb or any other platform like HomeAway or VRBO or many of the others that Jay mentioned. This should include full identification of that facility, their address, and their ownership. There is no earthly reason to keep this secret. By the way, there are a lot of other websites out there that list B&BS—Expedia, Hotels.com, Trivago. You know them—that list both the name and the address and the phone number and the name of the people. So if it's too hard for Airbnb, it must be too hard for them too.

- Allow each local government to regulate, inspect, and tax each facility that provides accommodation for compensation in the Commonwealth of Virginia.

- Require all facilities that provide accommodations for compensation to meet the applicable state and local government requirements for building codes, state and local fire and safety requirements and codes, state and local government Health Department regulations, and meet applicable state and local government ABC laws and regulations. For example, we offer breakfast, we offer alcoholic beverages. Oddly enough, so do about 10 of those B&Bs in Orange County. But they're not licensed or approved or within the law.

- Require any platform—example Airbnb, HomeAway, or VRBO—that collects and pays taxes for listing properties to provide each level of government with a full accounting of all income and revenue for the listed facilities and account for any taxes collected and paid by that hosting platform. And to solve the problem about Do we have the host do it or do we have the company do it, allow both. Require each actual host or operator of the facility that provides accommodations for compensation to collect and pay all applicable state sales taxes and lodging accommodation taxes whether directly or through a platform. It shouldn't matter one way or the other.

- And finally, require all facilities that provide accommodation for compensation for more 15 days or more per year to have appropriate insurance. You have that partially covered in what I've seen already.

- If you need additional assistance in coming up with some wording for the legislation, we'd be glad to help.

- And one final note: please don't forget to vote; we do.

- **Peace:** Thank you very much. Is there anyone else who would like to address the work group? Yes sir.

- **Don:** Don [inaudible], Fairfax County. First of all, I would like to say that I would like to see this proposal go *poof*. I think that's one of the best ways that we could go with it. In three minutes, I don't have time to say much about it. One of the things that was badly missing in this venue here is any representation of the neighborhoods at these tables. I'm kind of amazed at how well the real estate is represented, the B&B. everybody's lawyered up as well as they can be. But nobody is really going out there and seeing what kind of damage is going on out there.

    - I lived in Charles City for two years. I love this area. I know how you feel about Northern Virginia, and I understand how that factors into it. And I can't say I entirely blame you.

    - But for instance, nobody was there to answer the real estate representative about property rights and about the homeowner's rights. We have rights, too. There is no question that when they came here, the owners, they knew that 10 years ago, 20 years ago you could not build a motel or a hotel in a residential district. That we know. Clearly, nothing was changed when we said No, you can't do that. It was always that way. When they bought it, that was intact. The contract that we had with our county to honor the implied contract that you don't do that was dishonored. And now it's being dishonored by the realtors.

    - One thing that I would really like to say that I find particular onerous is the inapplicability clause. Now, we all know here that if we took that out, this would disappear. Why is that? Because you all are making decisions about us in our working class, unprotected neighborhoods that are going to descend on us. We've had this come down from Richmond in the Kate and Allie legislation that said you could have four unrelated people in a residential neighborhood. Dick Saslaw said just the other day that when that came along there was no possibility of getting any enforcement whatsoever until they were spilling out on the lawns. Clearly, that was a step in the direction that was imposed on Northern Virginia. We can't do anything about that.

    - Twelve child daycare centers in residential neighborhoods. We have 12 child daycare centers in the basements of townhouses in Fairfax County.

    - There's no way that we can bring to you the sense of destruction that is happening to our neighborhoods and not the HOAs. There is a map that we made a while ago that showed a protected neighborhood in the Mason District where I live. There were red marks all over the place for these big mansions. Just like phase 1 of this same kind of horrible proposal putting motels and hotels in and destroying neighborhoods. In that center, there was not one red dot because that was a protected neighborhood. That was Lake Barcroft. Lots of representation there. Our planning commissioner was there. Our delegate lives there. Class warfare is really what it is.

- I appreciate your being here. I appreciate the work you do in working on this. But there is something very badly missing from this discussion. Thank you very much.

- **Peace:** Thank you, sir. I appreciate it. Is there anyone else who would like to address the work group? Anyone at all? Okay. We thank you all for coming this long way and for sharing your voice. Believe me, it's very important for us to hear these comments.

  - We don't have anything standing between us and adjournment except for taking some action, if any, on the matrix or any subset thereof. The Housing Commission is scheduled to meet what date?

- **Elizabeth Palen:** We'll meet December the 14th at 10 a.m. in House Room C.

- **Peace:** So we have a month, essentially, with a holiday in between, between today and the full Housing Commission. That is the body that would make any final recommendation to the General Assembly and expressing its sense of where this issue should go in terms of whether there's a bill, whether it's statewide, whether it's all properties, whether it's central point of collect, preemption, tiers, registration, and some enforcement of some kind. That is obviously where the decision-making authority is. This has been an exercise to develop all those various points and policies around those various points. Senator Barker, did you want to make a recommendation?

- **Barker:** Let me make a recommendation if, for nothing else, to try to move things forward here. I'd hate for us to walk away from here and just wait until we reconvene as the Housing Commission on the fourteenth and then try to sort of work our way through this. I think there is a fair amount of consensus that we've moved at least toward, even if we're not fully there yet.

  - What I would suggest is that we agree:

    - That we're going to try to apply this to all types of properties so we're not going to have it be specifically limited to just primary residences for short-term types of things;

    - That we try to accomplish some type of system to differentiate among those, whether we call it a tiered system or whatever to try to look at it for the different characteristics of the different types of options there that we build into it;

    - That there be a mechanism for statewide collection of the taxes and those types of things and disbursement of those, remitting those to the localities where those would be called for;

    - That we have at least the option for at least a ministerial registration there so that there's at least that; and

        - That we in effect ask the stakeholders to see whether between now and December 14th you can come up with ways to sort of help us figure out how we could implement that so that we would have some framework to look at, at least when we convene on the fourteenth.

    - That would be my recommendation, Mr. Chairman.

- **Peace:** Thank you, Senator Barker. I'll hear that in the form of a motion. Is there a second to that motion as stated?

- **Male:** Second.

- **Peace:** There's a second. Is there any discussion? I would add that Lisa and Elizabeth would be available to stakeholders in that process to work through those finer points, because obviously that's where it meets the road. Mr. Dicks.

- **Dicks:** Mr. Chairman, a question on Senator Barker's motion. Would it include the exemption for real estate licensees as previously discussed?

- **Barker:** I'll leave that to the stakeholders to work it out.

- **Dicks:** Thank you. Then I would not be able to vote for the motion at this time without that in there.

- **Peace:** Any further discussion? Delegate Bulova.

- **Bulova:** I don't have a problem with moving forward with kind of a sense of the work group in order to come up with something, realizing that we can all withhold judgment. I guess two points, and they don't have to be in stone, but this would certainly help me.

    - If we do go with registration, we have tier 1 and tier 2. Keeping that tier 1 de minimis at a very low level. It really struck me the idea that even 14 days can be very high impact.

    - I guess the most important thing is if we could maintain the severability of certain parts, especially with regard to the zoning. I hear a good deal of conversation about registration, potential tiers, having the collection at a certain point.

    - But again, I really think that that part that's going to trip us up is the idea of usurping local zoning control. So however this is designed, I think it'll help the conversation if we're able to go ahead and have that be a manageable part rather than interspersed throughout the whole thing.

- **Mullen:** Thank you, Mr. Chairman. Edward Mullen with Reed Smith. I understand the spirit in which that was suggested. I guess from my perspective, they really are all intertwined, part and parcel. When we have ventured these sorts of things in other

places, albeit at the large municipal level, setting up the collect-and-remit framework and sort of addressing the land use issues is all part and parcel. And I think you can do it in a way that is somewhat flexible. And I think some of the tiered system discussions maybe do that, kind of come up with different situations for different things. It would be important for me for any final discussion to really at least for the primary residences—and that's an aspect of the tier system—come up with an ability to so it across the state.

- **Bulova:** Mr. Chairman, I'm not suggesting that that ought not to be fleshed out and discussed vigorously. But from my perspective, I think it would be helpful to go ahead and see what support there is with or without trespassing on local land use authority.

- **Peace:** Okay. So Senator Barker has made a motion and it was seconded that the stakeholders be charged with going forth and fine turning these baseline points that there seem to be some consensus around. And there's some exception to the realtor point, and there's a desire to include the severability element. I didn't hear Senator Barker say that. What I heard him say was those fine points will be left to the stakeholders.

    - The purpose of the work group will have been to collect information, distill it, set it up in a direction with earnest desire that the stakeholders develop what would be legislation that the Housing Commission would write.

- **Barker:** Thank you, Mr. Chairman. I guess my idea is that whatever we come up with, let's make sure that it works with or without the zoning components so that we're not struggling one way or the other when we're discussing it.

- **Peace:** I'll just say that many of us—Delegate Knight, you, me, Betsy—Senator Barker, we're members of the Commission and we're on the work group. So we'll know what the spirit was that was issued and what we expect to see back. And if it can't come back, then it can't come back.

- **Mullen:** Mr. Chairman, just from a point of clarification, what you are actually serving up to the Housing Commission is effectively this matrix, which is a list of issues along with the note that we've asked the stakeholders, to the best that they can, to continue to work together to come to some resolution on these. Maybe across the board there may not be.

- **Peace:** Mr. Mullen, to the point that Senator Barker made in his motion, where there are holes and unspecified items, particularly related to de minimis, I think Delegate Bulova mentioned, and the second tier, put a fine point on those and see if we can't come to some resolution before December 14th, if at all. If there is no recommendation made, we can recommend to the Commission this was the charge, these are the elements. And then the Commission always has the last say and prerogative into what it recommends. Mr. Rives.

- **Rives:** Mr. Chair, thank you. Sterling Rives, VACO. I heard Mr. Mullen indicate that Airbnb links the centralized tax collection with the preemption of local zoning authority, that that's the deal that's on the table. I think that if you listen to all the comments that you've heard here at these meetings, you've read the correspondence that you've received, there are many residents, along with local governments, who do not think that that's a very good deal. To have a voluntary system where Airbnb may file taxes directly in whichever localities they choose , to trade that off for loss of local zoning authority—and particularly when the information on which those taxes are based is kept from the localities, it's just not a very good deal for us.

    - With regard to the tiers, I will point out that one of the reasons that the counties are opposed to that concept is that the tier system cannot function unless there is accurate registration and reporting and transparency. We cannot know who would fall into which tier without that information from everyone who's engaged in short-term rentals.

    - In addition, for accurate collection and auditing of transient occupancy tax, we need that same information for not only who is renting, but also for how often and what are they receiving. Thank you.

- **Peace:** Mr. Rives, it's not totally dissimilar, what you said, to the issues that we've considered in the legislature concerning the commissioner's ability to access personal property in storage units. If you have a boat in a storage unit and localities want to know if you have your boat in their locality so that they can tax it. Would you say that they're somewhat analogous?

- **Rives:** I think there's a whole lot more at stake here than the random boat in a storage unit.

- **Peace:** I appreciate that.

- **Rives:** But you can draw a comparison, yes.

- **Peace:** It's the transparency matter that I'm trying to get to.

- **Rives:** Exactly. And it is the owner of the boat who's obligated to report that boat, just as it's the owner of the house that's being rented out who should have the obligation to report that to the commissioner.

- **Peace:** All tax collection is based on the honor system in its origin.

- **Terry:** Mr. Chairman, Eric Terry with the Virginia Restaurant, Lodging & Travel Association. Certainly, from our perspective we're committed to kind of working through. And we appreciate Senator Barker's recommendation. But I also share Mr. Rives' concerns about the voluntary nature of either taxes or registration. I think those have to be very important components of whatever we come to the table with. We've heard from many jurisdictions. Certainly our industry has to disclose everything that

we do up to the person renting the room. So we believe that's an important piece of the whole puzzle. But we're certainly willing to work earnestly to sort of get something that makes sense.

- **Peace:** Is there anyone else?

- **Bulova:** Mr. Chair, just to make sure I understand exactly what we're doing here. We are not endorsing any particular approach or any particular legislation. What we're doing is taking this framework and saying we're willing to make a run at it, and we're willing to take it to a next step to see whether there is consensus among stakeholders for these different elements, and that we're going to go ahead and present something at the Housing Commission and see if it still hangs altogether. And then we can decide whether or not there's something that's endorsable. Correct?

- **Peace:** I would say yes. And the basis will be what Senator Barker outlined as sort of the minimum considerations. Is there any further discussion on this recommendation? Delegate Carr.

- **Betsy Carr:** Mr. Chairman, is Lisa going to take this information and begin to kind of fashion a—

- **Peace:** That's an important question.

- **Carr:** Does she have enough information to fashion something or not?

- **Peace:** Elizabeth has about 25 pages of notes right here from all of our conversations with some common denominators outlined. Lisa and Elizabeth and I will work toward that end. She's made herself available. We appreciate that. Thank you.

    - We know the course we're taking. All in favor indicate by saying Aye. All opposed? How about all in favor raise your right hand? One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve. Twelve yays. Opposition—one, two, three. Twelve yays, three nays for those who are in their seats. Thank you very much.

V. Adjournment

- We appreciate your time. We stand adjourned.

COMMONWEALTH OF VIRGINIA

DELEGATE DANIEL MARSHALL,III, Chair
SENATOR MAMIE LOCKE, Vice-chair
ELIZABETH A. PALEN, Executive Director

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VIRGINIA HOUSING COMMISSION

AGENDA

Companion Animal Sub-Work Group

Wednesday, September 14, 2016

9:00 AM

5th Floor East Conference Room, GAB

I. Introductions

II. Discussion of Chip Dick's Draft Legislation

III. Recommendations for Work Group

IV. Adjournment

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
The Assistance/Companion Animal Sub-Workgroup
September 14, 2016, 9:00 AM
October 31, 2016, 2:00 PM
House Room C, General Assembly Building

On Wednesday, September 14, 2016 at 9:00 AM and Monday, October 31, 2016 at 2:00 PM the Assistance/Companion Animal Sub-Workgroup met in the 5th Floor East Conference Room of the General Assembly Building.

Present were:
Delegate David Bulova (by phone), John Cimino; Virginia Board People with Disabilities, Tom Payne; Office of the Attorney General, Mary Broz-Vaughan; Department of Professional regulation, Tyler Craddock; Virginia Manufactured and Mobile Home Association, Mathew Gray; Humane Society, Bismah Ahmed; Apartment OBA, Brian Gordon; Helen Hartiman; HOME, Chip Dicks; Martin Johnson; VAR, Eric Dunn; Virginia Poverty Law Center, and Elizabeth Palen; Executive Director of Virginia Housing Commission.

A discussion took place regarding reasonable accommodation for people with assistance animals in rental dwellings. The Attorney general's office offered a memorandum for discussion and a Guidance Document they had recently promulgated on the topic.

How to easily allow a rental manager to determine if an animal is an assistance animal was discussed at length.
Federal Fair Housing law and state implications were also discussed.

At the second meeting a bill draft was available for review--in the time leading to the final Virginia Housing Commission meeting of the interim, on December 14 ,many versions of a bill draft with input from all parties was distributed by email.

A bill draft was recommended by the Commission to be introduced during the legislative session.

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

AGENDA

Companion Animal Sub-Work Group

Monday, October 31, 2016

2:00 PM

5th Floor East Conference Room, GAB

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III. Recommendations for Work Group

IV. Adjournment

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

AGENDA

Historic District Disclosures Sub-Work Group

Tuesday, September 13, 2016

2:00 PM

5th Floor East Conference Room, GAB

I. Introductions

II. Discussion

III. Recommendations for Work Group

IV. Adjournment

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Virginia Housing Commission
The Historic Resource Sub-Workgroup
September 13, 2016, 2:00 PM
House Room C, General Assembly Building

The Historic Resource Sub-Workgroup met at 2:00 PM on September 13, 2016 in the 5th Floor East Conference Room, General Assembly Building.

The meeting was open to all interested parties and posted on the General Assembly and Virginia Housing Commission Website prior to the meeting.

Those who chose to sit at the table for the discussion were: Chip Dicks; Virginia Association of Realtors, Mark Flynn, Sherri Neil; Intergovernmental Affairs Manager, Portsmouth, Terri Danaher, citizen, Portsmouth Joe Lerch; VACO, Michelle Gowdy; VML. Elizabeth Palen, Executive Director of the Virginia Housing Commission for also present at the meeting.

The issue presented by Sherri Neil was the following: In Portsmouth there is a disconnect between the Code of Virginia (Section 15.2-2306) and the interpretation of the Historic Preservation Commission.

The Historic Preservation Commission is challenged by homeowners putting on non-historic roofs, taking off porches, historically incorrect windows, etc.... The issues are then brought to City Council, who then allows a variance for the homeowner. This affects the other homeowner's property values and the tax base of the city. It is essentially "demolition by neglect."

The Historic Districts of Portsmouth would like a check box to be added to the real estate contract signifying that the buyer is aware that although not in a property owner association, they are purchasing in a historic district and must comply with the requirements to live within the historic area.

A discussion ensued about the issues of different localities having vastly different requirements for historic districts and the onus being placed on the realtor.

The meeting concluded by Mark Flynn and Chip Dicks offering to create a draft which would inform the buyers interested in purchasing a home that they should determine if they are buying in an historic district and be aware that there are special considerations--they will submit the suggested draft to the sub-workgroup members for their input . The City of Portsmouth will post on their website where historic districts are located and the requirements to live in each historic district in their locality.