

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Meeting Summary

Virginia Housing Commission

Tuesday, April 16, 2024, 2:00 PM

Senate Room C (Room 311), The General Assembly Building

Introduction:

Senator Mamie Locke, Chair, called the meeting to order at 2:00 p.m.

Members present: Senator Mamie Locke, Senator Ghazala Hashmi, Delegate David Bulova, Delegate Carrie E. Coyner, Delegate Briana Sewell, Delegate Adele McClure, Laura Lafayette, Gubernatorial Appointee, Joshua Goldschmidt, Gubernatorial Appointee, Elizabeth Palen, Executive Director

Members absent: Delegate Danny Marshall, James Forest Hayes, Gubernatorial Appointee

The meeting began with introductions and opening remarks followed by presentations and discussion/consideration of affordable housing on religious property, the recent proposed NAR real estate settlement and its impact on the Virginia housing market.

Materials presented at the meeting are accessible through the [Commission's website](#).

Presentations:

Affordable Housing on Religious Property

Riley T. Keenan, J.D., Assistant Professor of Law University of Richmond School of Law

Riley T. Keenan, J.D., Assistant Professor of Law at University of Richmond School of Law, discussed the constitutional aspects of affordable housing on religious property and how they relate to the Faith in Housing for the Commonwealth Act ([SB233](#)).

Keenan discussed four main items before providing his conclusions and suggestions for constitutionally strengthening the Faith in Housing for the Commonwealth Act:

1. He gave a general overview of the religion clauses of the first amendment.
2. He spoke about the Supreme Court's cases that deal with religious exemptions.
3. He discussed the Faith in Housing bill from the 2024 Session, SB 233 (Hashmi, G., 2024).
4. He compared the interaction between the Faith in Housing bill and the Federal Fair Housing Act.

He provided a general overview of the religion clauses of the first amendment.

Keenan explained the religion clauses in the first amendment come from the first sentence "congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof," This is divided into two clauses, the Establishment Clause, and the Free Exercise Clause.

- The establishment clause prohibits the government from establishing a state religion or acting in a way that looks too much like establishing a state religion.
- The free exercise clause forbids the government from interfering in religious practices.

Keenan said there are benefits a state may not give because of the Establishment Clause and benefits they must give because of the Free Exercise Clause. There are other benefits that fall in a middle area that he terms “playing in the joints.”

Keenan discussed Supreme Court cases that deal with religious exemptions from generally applicable laws:

Keenan explained that the Free Exercise Clause does not require the government to provide exemptions from generally applicable laws.

- He provided an example from Oregon: The Supreme Court decided Oregon can enforce a ban on the drug peyote because it is a generally applicable law. However, in a different case, the Court decided the state can't create a law that is designed to target a specific religious practice. In that case, the state couldn't create a law banning “animal killing,” because it was targeted to prevent religious animal sacrifice.

Keenan explained the Establishment Clause comes into play when the state voluntarily creates a religious exemption from otherwise generally applicable law - like the Faith in Housing bill creating exemptions from zoning laws.

- When the Court is evaluating these laws, they consider four questions. Keenan listed these four questions.
 - 1) Does the law apply only to religious organizations, or does it also apply to some secular non-profit organizations?
 - 2) Does it lift a state-imposed burden on free exercise of religion?
 - 3) Does it unduly burden those who do not benefit from the law?
 - 4) Does it support suspect activity, like proselytization?

Professor Keenan said all of this indicates that the Faith in Housing Act is in the middle, in the "play in the joints area." A state may or may not give a particular benefit to religion. It doesn't have to, but it may do so.

Keenan explained what this discussion means for the Faith in Housing Act:

He explained the bill would allow religious organizations to construct affordable housing on their existing property notwithstanding local zoning. This makes the Act an exemption from an otherwise generally applicable law. It is an Establishment Clause question.

- To answer the question, Keenan used the four-part question framework mentioned above.

Keenan said the bill only applying to religious organizations is not necessarily fatal, but it does not help the establishment clause question. He added the Virginia bill lifts a state-imposed burden on freedom or exercise because many religious organizations would argue that providing affordable housing is part of their faith mission. The Supreme Court does not want to get involved and decide if this is a sincerely held religious belief, so the Court allows the states to create these categorical exemptions as long as it's not exempting for-profit activity.

The Interaction Between the Faith in Housing Bill and the Federal Fair Housing Act:

Keenan explained that the Federal Fair Housing Act makes it unlawful to refuse to sell a dwelling to individuals due to religion, but the act also exempts a religious organization that owns or operates housing for other than commercial uses. Keenan posed the question - could a development under the Faith in Housing Act discriminate based on religion? He explained a nonprofit basis is not a commercial basis, which means it would fall in the exemption area of the Faith in Housing Act and that is the problem.

Keenan shared his conclusions and suggestions for the Faith in Housing in the Commonwealth Act:

Keenan reiterated that the Faith in Housing Act probably falls between the two religious clauses mapped out at the beginning of the discussion, and the bill would probably survive a constitutional challenge. However, he explained the legislature could strengthen the bill from a constitutional standpoint with the following provisions:

- Extend it to nonprofit organizations like California's recently passed legislation.
- Expressly prohibit religious discrimination against tenants.

Questions:

Senator Hashmi asked if in terms of what other states and localities have done, have any significant legal challenges emerged in the courts?

Professor Keenan answered it has not, but believes it is still too early to determine if significant challenges will emerge.

Delegate Bulova believes most of these projects would require some sort of public private partnership, and asked how you factor in the fact that the private partner is going to want to make a profit. How does that factor into the nonprofit constitutional aspect of the bill?

Keenan answered that this is less of an issue if it is a private actor brought in, but it is complicated when it comes to the relationship of the religious organization and the private actor. However, his understanding of the bill is that the property manager must be nonprofit, so the bill as written might avoid a lot of that concern. The core of the issue is making sure the religious organization is not making a profit, so the government is not creating a benefit in a competitive economic environment.

Brief Comments on the National Association of Realtors Settlement

Terrie Suit, CEO Virginia Association of Realtors

Terrie Suit, CEO Virginia Association of Realtors gave brief comments on the interest in the recent National Association of Realtors (NAR) Settlement.

She began by providing background information explaining that the real estate industry in 1984-85 had what were called “sub-agencies”. When a licensee listed a sale and negotiated a compensation amount with a seller, the licensee would then share that information on the multiple listing service (MLS), and they would offer to share their compensation with a sub-agent.

The NAR created a rule that said that any realtor on the MLS required when a property was listed, that the listing broker offer an amount of compensation to be shared with any potential buyer agents or brokers. Because of that rule there was a perception in this lawsuit that the buyers weren’t negotiating their own compensation amount with the buyer agent. The premise of the lawsuit was that the plaintiffs wanted to have the ability to negotiate compensation for their broker.

Code of Virginia Chapter 21, Article 3, Section 54.1-2132 ([Section 54.1-2132](#)) put the requirement for a buyer compensation agreement in the law. However, even though the buyer’s compensation was negotiated in that agreement, if the sellers, through their listing agent negotiated an amount that was different, then that was the amount that the buyer’s agent would receive.

On March 15, 2024, the NAR entered into a proposed settlement agreement saying they will reverse that rule, thus prohibiting offers of compensation being listed on the multiple listing service and will now require that all agents working with a buyer have a written buyer agency agreement. In that agreement they will include the actual amount of the compensation.

The difference is the buyer has their compensation agreement but would like the seller to cover that cost, then that listing agent and that buyer agent would have a conversation asking if the sellers are willing to help with closing costs or offer closing assistance. It’s an added step that won’t be seen in the MLS.

One of the things the NAR is discussing with its members is making sure the sellers understand the law of supply and demand. The more demand, the more favorable terms of a sale they’re going to see. If they want to increase demand, then they may want to be more open to helping with things like closing costs, compensation to the buyer broker, etc.

The Recent Real Estate Settlement and the Impact on the Virginia Housing Market

Lisa Sturtevant, Ph.D., Chief Economist Bright MLS

Lisa Sturtevant, Ph.D., Chief Economist Bright MLS explained that regarding this proposed settlement, there are still issues that are being decided, and we will not know the outcome until later this year.

She began her presentation by explaining that the multiple listing service (MLS) is the centralized database where property listings are entered by sellers' agents.

She stated that:

- All homebuyers have access to all available listings.
- Data is made available to public online real estate portals such as Zillow.
- Property data entered in the MLS is consistent and accurate.

She provided additional information regarding the current housing market:

- Home prices have been rising faster than incomes and price appreciation in Virginia outpaces the nation.
- Housing affordability is a growing challenge due to rapid price growth and elevated mortgage rates make buying a home more difficult.
- The income needed to afford a home in Virginia has increased by 76% between 2020 and 2024.
- It is a challenging market, particularly if you are a moderate-income buyer or a first-time home buyer.
- First-time home buyers have a challenge because they are competing with people who have equity.
- Low inventory has been a constraint on the market and buyers have few options and a lot of competition.
- Mortgage rates drive both supply and demand.
- Rates are not particularly high by historic standards, but home prices are higher, and affordability is more challenging.
- Homeownership rates are higher in Virginia than in the U.S. overall, however racial gaps in homeownership rates persist.

Sturtevant emphasized that the homeownership gap in Virginia and the U.S. is almost the same as it was when the Fair Housing Act was passed in 1968. Research from the Urban Institute shows that 70% of the new homeowners over the next 20 or 30 years are going to be Hispanic or Latino.

What does the NAR settlement do?

- It ends most of the lawsuits.
- The NAR covers most of the settlement payments.
- It creates new MLS rules.
- It emphasizes the role negotiations have always played in the transaction.

Sturtevant said that this case should not be called the NAR settlement, but the “proposed” NAR settlement. She added that it has started people thinking about how this will affect the real estate market. Homebuyers and sellers are hearing misleading, and in some cases, inaccurate information about the real estate industry, real estate commissions, and multiple listing services (MLSs) in the wake of the recent class action litigation.

Bright MLS conducted research to help clarify how home sales transactions work and to show how Realtors® and the MLS bring value to consumers. They collected data on one million home sale transactions over a four-year period across six states and the District of Columbia and came to a few different conclusions:

Fact #1: Agents do not “steer” buyers to homes with higher buyer agent commissions.

Fact #2: Commissions are not driving up home prices.

Fact #3: Listing a home on the MLS creates an open and fair housing marketplace.

Fact #4: Homebuyers highly value a knowledgeable, professional buyer's agent.

Sturtevant offered a possible timeline for the proposed NAR settlement:

Q2 2024:

- A consolidation of class action lawsuits will be completed.
- There will be a “Fairness” hearing and preliminary approval of settlement.

Q3 2024:

- New rules will be in effect.
- The MLS systems will be updated.
- The forms will be updated.

Q4 2024 or later:

- Comments to the court on settlement will be heard.
- Some plaintiffs may “opt out” of the settlement.
- The Court will give its final approval.
- Most cases will be dismissed.

The Settlement’s Potential Impact on the Housing Market in Virginia and More Broadly Across the U.S.

Moderate-income, first-generation, young, and veteran homebuyers could have a harder time in this competitive housing market for several reasons:

- The need to pay buyer representation out of pocket could be difficult.
- There is the possibility of buyers going without representation.
- The sellers could offer closing cost assistance.
- There could be fewer listings available via the MLS.
- There likely will not be an impact on the overall number of home sales transactions in Virginia, but there could be shifts in timing.
- Higher-income buyers or cash buyers could be better positioned to purchase homes.
- Supply and demand could drive housing market activity.

Lisa Sturtevant added that there may be ways that we could help homebuyers at the state level.

Potential Areas for State Government Involvement

- By offering homebuyer assistance for representation (like downpayment assistance programs that already exist).
- By having the requirement that listings represented by a licensed real estate agent be listed on an MLS.
- By having continued and increased attention on fair housing and access to homeownership, particularly among minority homebuyers.

Questions:

Laura Lafayette asked if Bright MLS has been tracking any migratory patterns. In the Richmond area she stated that people who are remote workers are still coming to Richmond from D.C. They are making cash offers on homes because they receive higher wages. Because of this they are crowding out low- to medium- income home buyers in the Richmond region.

Sturtevant answered that they have continued reporting it primarily in the Richmond market and in the Shenandoah Valley market. About 31% of jobs in the Washington, D.C. area are held by people working from home, but that number has plateaued. She thinks that will change if the federal government requires workers to come back to work in person.

Delegate McClure asked if there is any data on whether the cash buyers are single individuals, families, or companies.

Sturtevant replied that we hear about investors, but they are not the big source of cash buyers in Virginia. While there are institutional investors in Virginia, Washington, D.C., and Northern Virginia, Richmond has not seen players in that market. Charlotte, Orlando, and Atlanta are where we are seeing a large concentration of investors.

Joshua Goldschmidt, Gubernatorial Appointee asked if in Bright MLS' research on home building they looked at the cost of regulation or the scarcity of labor, or availability of materials and how that impacts these homes.

Lisa Sturtevant replied that in this study they did not but reiterated that data indicates that due to state and local regulations, there is a 34% increase to the end user cost of a single-family home.

Conclusion:

Elizabeth Palen, Executive Director Virginia Housing Commission asked the members of the commission who have not already let her know which workgroups they would like to work, please let her know within the next couple of days.

Senator Locke added that workgroups will begin meeting in May.

Elizabeth Palen provided the list of future meetings to be held over the coming months:

- ~ May 20, 2024; Special ADU Workgroup meeting.
- ~ June 5, 2024; Local Land Use and Community Living Workgroup meeting.
- ~ June 5, 2024; Affordable Housing, Landlord and Tenant Law Workgroup meeting.
- ~ July 15, 2024; Full Virginia Housing Commission meeting.

All the next meetings will be held in Senate Room C (Room 311) of the General Assembly Building.

The meeting adjourned at 3:14 PM.