

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### Meeting Summary

#### Real Estate Law and Mortgages Workgroup General Assembly Building, House Room D June 8, 2010, 10:00 A.M.

Members Present: Delegate John A. Cosgrove (Chair), Senator Mary Margaret Whipple, Michele Watson, W. Shaun Pharr, Neal Barber, Connie Chamberlin, Mark K. Flynn, Alexander Macaulay, Chip Dicks, Kelly Harris-Braxton, Barrett Hardiman, John Jordan

#### I. Welcome and call to order

- **Delegate John Cosgrove**, Chair
  - Meeting called to order at 10:10 A.M.

#### II. HB 1152—Foreclosure of affordable dwelling units (Scott, 2010)

- **Delegate Scott**—In Northern Virginia there are two big problems—transportation and housing. People for the community have tried to invest resources into the area; every year millions of dollars are spent on transportation and affordable housing. HB 1152 is designed to help prevent the closing of affordable housing. I understand there are still many issues that need to be discussed; there are experts here today to talk about the foreclosure problem. It is important that we communicate with people from the industry to solve this problem. Thank you for the opportunity to offer background information.
- **Karen J. Harwood**, *Legislative Liaison, Fairfax County*
  - There are two enabling statutes—both authorize localities to establish Affordable Dwelling Unit (ADU) programs. The price of the housing is not to exceed 70% of the median area income.
  - Those units are then restricted, they can be bought and sold between for a controlled number of years, currently thirty years. Covenants are in the land records stating that the unit is an ADU.
  - At the end of the control period, the equity that is in the unit is split between the current owner and the housing trust fund.
  - ADU's are being leveraged above the control price. People owning ADU's are going and getting home equity loans, refinancing, etc. The concern is that a full title search is not being done, that banks are only looking from the current owner forward. It is necessary to go back to the deed of the subdivision to find that the house is an ADU.

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

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

F. GARY GARCZYNSKI  
T. K. SOMANATH  
MELANIE S. THOMPSON

- If the owners are not able to pay their mortgage and the house goes into foreclosure, the owners have loans that far exceed the control price.
- *HB 1152* proposes that where there is an ADU unit and there are covenants specifically identifying it as such, notice must go to the locality. The bill gives the exclusive right to purchase the ADU to the housing authority or to the locality, if there is not a housing authority.
  - When the advertisement of foreclosure sale is published, then the notice shall include that the particular property is subject to sales price limitations.
  - Control price augments over time with the consumer price index.
  - The bill means the lender would be made whole and the housing authority would be able to buy it and keep it in the affordable housing stock.
- The bill was held up because there was interest expressed by bankers and others about how the specifics may affect their business. A meeting was held where it became apparent that there is a lot of interest in the issue, so it was sent to the Housing Commission for further study.
- **Delegate Cosgrove**— *It appears the locality does not put down a cash deposit; why should the locality not have to put a cash deposit down just as any buyer would?*
  - If the government has indicated they were going to buy the AUD it because they are going to do it, they are capable of paying.
- **Delegate Cosgrove**— *My only issue is that it is good for everyone but the government.*
- **Michele Watson, Director, Homeownership Programs, Virginia Housing Development Authority (VHDA)**
  - There has been a considerable challenge of preserving affordable housing and VHDA has worked very closely with localities for decades on this issue. The mortgage market states that if a borrower does not make the 20% down payment, then there has to be mortgage insurance on their loan. The mortgage may be insured by the federal government or the state, or it may be privately insured.
  - VHDA's concern with legislation is that it does not seem to be compatible with insurance requirements. The mortgage market now is predominately government insured. Right now 90% are insured by the Federal Housing Association (FHA). Two years ago 50% of mortgages were privately insured. The perception amongst borrowers is that there is less risk with government loans.
  - The issue is that the regulations are specific and no where in the regulations does it allow for anything like a control price. If the restriction is not mentioned in the FHA regulations or guidelines than it is not an acceptable restriction on the property.
  - The challenge is that if this bill moves forward there may be quite a few borrowers who will be outside the market because they will not be able to obtain FHA insurance. VHDA is more than happy to try and come to a solution—we had a conversation with Director of Atlanta's FHA, to try and see if there is anything that could be done. He indicated that he wouldn't discourage a locality from applying for waiver—but right now FHA is about risk management. FHA is the market right now, because it is flexible. Without it people cannot purchase and resell.
  - **Senator Whipple**—*But, the control price already exist and has existed for 20 years, isn't that correct?*

- To a large degree that control price has been ignored. Many borrowers do go and get equity lines.
  - **Senator Whipple**—*That's not legal, that's a banking problem.*
    - One of the concerns is that some of these units are not easily identifiable; even though they're flagged as controlled units, there are different versions and variations of the covenants. What very often happens is that people only do a title search down from the current transaction to the sale. It causes serious problems. At VHDA we have down payment assistance but we cannot offer it here for this reason.
  - **Senator Whipple**—*Are you worried that after the housing authority has the right to purchase, then they are going to want to sell?*
    - Right now we are concerned that the regulation is not in compliance with FHA regulations. VHDA needs to certify every year that our programs are in compliance.
  - **Senator Whipple**—*The problem is not with the legislation, the problem is with the ordinance.*
    - Previously soft seconds were available and mortgage insurance was not necessary and we were able to bypass this issue. With the economy the way it is, borrowers turn to insurance because they do not have the funds to supply the large second deed of trust. The private sector is fine. We do not want to exclude the borrowers through the VHDA program.
- **Philip Boykin**, *Virginia Bankers Association (in lieu of Boyd Allison, Virginia Mortgage Lender's Association who was unable to attend the meeting due to illness.)*
  - The issue is more complicated than just doing a title search. We are willing to work with Fairfax County. One suggestion is to disclose the unit as an ADU on the front end. This way, when the title search is done it will be obvious the property is part of the affordable housing program.
  - **Delegate Cosgrove**—*What about the practice of lenders lending on equity that doesn't exist?*
  - The standard practice is when someone comes to us we do a title search and evaluate the property. It is possible the lender may make a loan without knowing the owner doesn't have the right to the certain value. The borrower is not being upfront with everyone.
  - **Barrett Hardiman**, Home Builder's Association—*With the 70% AMI what exactly does that cost?*
    - **Karen Harwood**—For example, in the neighborhood where the market units are \$350,000 the control units are \$130,000. There is a formula that has included that as improvements increase the value, the value of the unit increases.
  - **Barrett Hardiman**—*How are the assessments on the houses made?*
    - **Karen Harwood**—Assessments are made based on the control price.
  - **Michele Watson**—*Part of the challenge we face is that we use the federal application form. We are not permitted to modify the form. If not in compliance with FHA regulations, the borrower cannot be insured.*
  - So essentially, the problem we have is bigger than this legislation, it is can you have an affordable dwelling unit ordinance?

- **Michele Watson**—Yes, this issue was raised last year and only then did VHDA realize that this was a problem. We relied upon lenders and the localities to do the title searches.
  - **W. Shaun Pharr**, *Apartment and Office Building Association*—*To be clear on the fundamental source of the problem, doesn't sound like someone has misapprehended something, seems like FHA is the only insurer available and they don't recognize the ADU program.*
    - **Michele Watson**—Yes, that is correct.
  - **Senator Whipple**—*That seems to be against federal policy.*
  - **Neil Barber**, *President, Community Futures*—*How many units in Virginia are ADU's?*
    - **Karen Harwood**—In Northern Virginia we have between 1,300-1,400. Of those, it is estimated that about 23% are over-leveraged.
    - **Michele Watson**—We have been collecting data on how many units exist throughout Virginia. In Northern Virginia alone we have found somewhere around 2,500 that exist or are new.
  - **Delegate Cosgrove**—*If somebody who is a carpenter, for example, buys the unit as an affordable home can they add onto the house? In a normal buyer/seller world the addition would add to the assessment. How does that addition affect the value of the house?*
    - **Karen Harwood**—Certain improvements may be made by the owner to the ADU that would add to the control price base. The owner needs to get clearance from housing authority program. When it is permitted, that does increase the value and it would increase what they would then recover should they sell.
  - **W. Shaun Pharr**—*Did you say earlier that the control price has never gone down it has only gone up?*
    - **Karen Harwood**—That is what I was told, there is still enough value in the land and our economy is such that year to year it doesn't go down.
  - **W. Shaun Pharr**—*It would seem like even at the peak of the housing bubble it would have driven the price of ADU's.*
  - **Delegate Scott**—*We will try and get everybody together here.*
  - **Delegate Cosgrove**—*There is more to be done on improving the ordinance.*

III. Affordable housing units; assessments (§ 58.1-3295) (SB 273—Whipple, 2010) (HB 233—Dance, 2010).

- **Senator Whipple**—*In the process of the bill being amended, it ended up putting a key feature in only one section of the code not two. It needs to go into other section so it covers everything it was supposed to cover.*
- **Mark Flynn**, *Virginia Municipal League*—SB 273 and HB 233 allow owners of affordable housing to obtain assessments based on the income approach. Under the current law, assessors lack the ability to require owners of four or fewer units to provide proof of income. The governor's amendment was aimed at fixing this problem. However, the language now conflicts with § 58.1-3294 of the Code of Virginia. The concern now is that a judge may misinterpret the intent and how it is written. There are a couple of ways to fix it, the best way being to go back into § 58.1-3295 and specify that all owners of affordable housing units must comply with all provisions of § 58.1-3294.

- **Chip Dicks**—*This is a technical error that we can try to change it in § 58.1-3295.*
- **Delegate Cosgrove**—*Mark, would you work with Chip Dicks to fix language and bring it back to us at the next meeting.*

#### IV. Public Comment

- **Connie Chamberlin**—HOME
  - The issue has to do with the SAFE Act and what appears to be HUD's interpretation about whether or not nonprofit administrators of down payment assistance programs are required to be licensed as mortgage originators. I would guess that none of the nonprofits in the state are currently licensed. That has the potential to bring down payment/rehab programs to a halt until this can be sorted out. My question of the Chair is, is there any way a contingent license could be issued if the entity making the loan application is a non-profit organization?
  - **Delegate Cosgrove**—*We need to have the SCC at the table, may need the mortgage work group to answer this question.*
  - **Michele Watson**—*The SAFE Act is a real challenge, we are actually getting our staff licensed and going through the process which is pretty cumbersome. In this process since February, we only have one person who has received their license.*
  - **Connie Chamberlin**—*With out those soft seconds a lot of loans can't be made to consumers.*

#### V. Adjourn

- The meeting was adjourned at 11:15 A.M.