

# **VIRGINIA HOUSING COMMISSION**

**2014 ANNUAL REPORT**

## Commission Membership

Mamie E. Locke, Chair	Senate of Virginia
Daniel W. Marshall, III, Vice-chair	House of Delegates
George L. Barker	Senate of Virginia
John C. Watkins	Senate of Virginia
David L. Bulova	House of Delegates
Rosalyn R. Dance	House of Delegates
Barry D. Knight	House of Delegates
Mark K. Flynn	Governor Appointee
T. K. Somanath	Governor Appointee
Laura D. Lafayette	Governor Appointee
Elizabeth A. Palen	Executive Director

# Housing and Environmental Standards

John Watkins, Chair	Senate of Virginia
George Barker	Senate of Virginia
David Bulova	House of Delegates
Daniel Marshall	House of Delegates
Barry Knight	House of Delegates
Mark Flynn	Governor Appointee/Virginia Municipal League
Brian Buniva	LeClairRyan
Ron Clements	Virginia Building & Code Officials Association
Michael Congleton	Fairfax County Planning Commission
Tyler Craddock	Manufactured & Modular Housing Association
James R. Dawson	Virginia Fire Prevention Association
Chip Dicks	Virginia Association of Realtors
Sean P. Farrell	Virginia Building & Code Officials Association
John Hastings	Virginia Housing Development Authority
Erik Johnston	Virginia Association of Counties
John H. Jordan	Manufactured Housing Communities of Virginia
Ralston King	Whitehead Consulting
Art Lipscomb	Virginia Professional Fire Fighters
Katherine Payne	Williams Mullen
Shaun Pharr	Apartment and Office Building Association
Ed Rhodes	Virginia Fire Chiefs Association
Emory Rodgers	Department of Housing & Community Development
Neal Rogers	Virginia Housing Development Authority
Michael L. 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
Barry Knight	House of Delegates
George Barker	Senate of Virginia
Laura Lafayette	Gubernatorial Appointee
Sarah Broadwater	CIC Resident
Janice Burgess	Virginia Housing Development Authority
Michelle Casciato	Community Association Institute
Tyler Craddock	Manufactured & Modular Housing Association
Chip Dicks	Virginia Association of Realtors
Heather Gillespie	Common Interest Communities Ombudsperson
Dale Goodman	Virginia Resort Development Association
Trisha Henshaw	Common Interest Community, Executive Director
Joseph Hudgins	Independent Insurance Agents of Virginia
Mike Inman	Community Association Institute
Erik Johnston	Virginia Association of Counties
Ronald P. Kirby	Virginia Association of Community Managers
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 Trigiani	Common Interest Communities Board
Jerry Wright	Community Association Institute

# Affordable Housing, Real Estate Law, & Mortgages

Daniel Marshall, Chair	House of Delegates
Rosalyn Dance	House of Delegates
Barry Knight	House of Delegates
Christopher Peace	House of Delegates
Mamie Locke	Senate of Virginia
George Barker	Senate of Virginia
Mark Flynn	Governor Appointee/Virginia Municipal League
T.K. Somanath	Governor Appointee
Neal J. Barber	Community Futures
Steve Baugher	Virginia Association Mortgage Brokers
Paul Brennan	Virginia Housing Development Authority
Robert N. Bradshaw	Independent Insurance Agents of Virginia
J.G. Carter	TowneBank Mortgage
Tyler Craddock	Manufactured & Modular Housing Association
Chip Dicks	Virginia Association of Realtors
Andrew M. Friedman	Virginia Beach Dept. Housing & Neighborhood Preservation
Kelly Harris-Braxton	Virginia First Cities
Kelly King Horne	Homeward
Erik Johnston	Virginia Association of Counties
Katherine Payne	Williams Mullen
Shaun Pharr	Apartment and Office Building Association
Renee Pulliam	Virginia Apartment Management Association
Jay Speer	Poverty Law Center
Elizabeth Steele	Stewart Title
Chris Thompson	Dept. of Housing and Community Development
Michael Toalson	Home Builders Association of Virginia
William Walton	Real Property, Inc.
Michele Watson	Virginia Housing Development Authority
Cal Whitehead	Whitehead Consulting

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## **Executive Summary**

The Virginia Housing Commission, a legislative commission, met throughout 2014 to work to solve a variety of housing-based issues ranging from building code interpretation, affordable housing, mortgage concerns and landlord -tenant law. Other issues included; manufactured home concerns, clean energy financing for commercial structures, and common interest community association size. Additionally, expert speakers educated the Commission on the topics of judicial foreclosure and on proffers offered to localities to determine zoning as well as housing sales, housing starts, and mortgage foreclosure rates throughout the Commonwealth.

Legislation recommended by the Commission for the 2015 General Assembly session includes allowing a voluntary special assessment lien against property where clean energy systems are installed; disallowing retaliatory eviction by landlords when a tenant has lawfully complained, and changes in foreclosure advertising for time-share projects.

Many housing issues were fully vetted by the Commission and non-legislative solutions were recommended; letters expressing the will of the Commission were sent to state agencies encouraging change in policy. Tools, such as a survey to determine if the Commission was the proper venue for discussion of the size of property owner associations, were used to make sure the Commission's work produced the best outcomes for housing in the Commonwealth.

The Commission formed three workgroups and a sub workgroup to thoroughly study each housing- related concern. In addition to leadership provided by the eight legislators and three gubernatorial appointees, stakeholders from each housing interest group applied to be workgroup members and then offered the opinion of their associations to the workgroup. All interested parties were given opportunity for input assuring that proposed legislation heard by the Commission was fully studied and all parties from consumers, developers, homebuilders, realtors, mortgage bankers, localities and many others had their opinions considered. Each housing- related issue ultimately had a solution developed by the Commission.

The Commission was created 45 years ago by the 1970 session of the General Assembly "to study the ways and means best designed to utilize existing resources and develop facilities that will provide the Commonwealth's growing population with adequate housing." The Commission continues to fulfill its initial mandate while also expanding its scope of topics to incorporate the ever- changing housing and housing-related needs of the Commonwealth. With assistance from housing partners, Virginia Housing and Development Authority and the Department of Housing and Community Development, the Virginia Housing Commission continues to provide innovative solutions to complex community development, environmental and other pressing housing needs facing the Commonwealth.

The Commission has endorsed legislation and the members will promote and support the legislation during the session. Commission meetings will resume after the legislature has adjourned for the 2015 regular session. Agendas and summaries of each meeting are attached

to this report and can be accessed through the Virginia Housing Commission website:  
(<http://dls.virginia.gov/commissions/vhc.htm>).



# COMMONWEALTH OF VIRGINIA

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



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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### **Virginia Housing Commission April 22, 2014, 2 PM Senate Room A General Assembly Building**

- I. Welcome and Call to Order/Introductions
  - Senator Mamie Locke, *Chair*
- II. Brief remarks
  - Maurice Jones  
*Secretary of Commerce and Trade*
- III. Quarterly Housing Trends
  - Sonya Waddell  
*Regional Economist  
The Federal Reserve Bank of Richmond*
- IV. Church Street renovations/Norfolk
  - Charles Rigney  
*Assistant Director of Development, Norfolk*
- V. Interim Workgroup Agendas
  - Elizabeth Palen  
*Executive Director*
- VI. Public Comment
- VII. Adjourn

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

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

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### Virginia Housing Commission

#### Full Commission Meeting

April 22, 2014, at 2:00 p.m.  
Senate Room A, General Assembly Building  
Richmond, Virginia

#### I. Call to Order

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

**Members in attendance:** Senator Mamie E. Locke, *Chair*; Delegate Daniel W. Marshall, III, *Vice-Chair*; Senator George L. Barker; Senator John C. Watkins; Delegate David L. Bulova; Delegate Rosalyn R. Dance; 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*

#### II. Quarterly Housing Trends

**Presentation: Sonya Waddell**, Regional Economist, *The Federal Reserve Bank of Richmond*: I am presenting an overview of the housing trends and mortgage foreclosure numbers that have been calculated since my last presentation in December 2013. The following is a presentation using charts and graphs:

[http://services.dlas.virginia.gov/User\\_db/frmView.aspx?ViewId=3979&s=16](http://services.dlas.virginia.gov/User_db/frmView.aspx?ViewId=3979&s=16)

- We are in a housing recovery but it is slowing in the last few months. Two factors may be contributory: bad weather and slowing in the labor market.
- In the fourth quarter of 2013, 1.03 percent of mortgages in the Commonwealth were in a form of foreclosure.
- In the Commonwealth, there are still 9,000 homes in foreclosure. Though this number is considerably lower than levels reached during the last few years, and though foreclosure numbers are falling, this is significantly above ideal levels. (Please see the attachment for charts and graphs of foreclosure numbers.)

- Virginia ranks 46th out of the 50 states in number of foreclosures; only four states have fewer foreclosures.
- There is continued overall improvement in residential real estate in Virginia, but in general improvement has slowed in recent months due to:
  - ❖ Rising house prices, though the rate of increase has tapered off recently
  - ❖ Declining inventory of distressed property
  - ❖ Generally rising sales, though that increase has been sluggish recently as well
- Virginia has seen recovery in jobs growth, but more growth is needed and recent data is not as positive as it should be for a strong economy.
- Federal government spending is a big part of Virginia's economy, which has both positive and negative implications.

### **III. Presentation: Maurice Jones, Secretary of Commerce and Trade**

- **Secretary Jones** spoke about housing policy and priorities during the McAuliffe administration.
- There are big opportunities to make a difference in the area of homelessness. Concentrations should be made regarding homelessness among veterans, the Housing Trust Fund, and housing for people with disabilities, and there is still work to be done concerning foreclosures in Virginia.
- We have to make sure that economic development is not discussed separately from housing. We need to orchestrate assets collectively, including public safety agencies, educational assets, and transportation, to create neighborhood transformation.
- We need mixed-income neighborhoods with connection to jobs. We are 122,000 jobs behind where we should be with jobs. We need a new normal and healthy balance with foreclosures.

### **IV. Presentation: Charles Rigney, Assistant Director of Development, Norfolk: Funding Historic Property Revitalization Through Public Private Partnerships:**

- Please see the materials posted online:

[http://services.dlas.virginia.gov/User\\_db/frmView.aspx?ViewId=3980&s=16](http://services.dlas.virginia.gov/User_db/frmView.aspx?ViewId=3980&s=16)

The projects discussed need a certain amount of private dollars in order for the public dollars to be allotted.

- We have seen a 20 percent increase in investments.
- Projects that take two years to complete receive 15 years of tax abatement.
- Citywide, not zone specific; the projects must meet certain criteria:

- 1) Significant capital investment;
- 2) 10-year business model;
- 3) Catalytic impact;
- 4) In conformity with city needs; and
- 5) If not for the dollars, this deal might go to another state and be successful.

**V. Interim Workgroup Agenda: Elizabeth Palen**

The workgroup assignment of subject matter was distributed. Ms. Palen reiterated that the workload was evolving and fluid and that new topics may be added as the interim progresses. The workgroups will retain their current chairpersons, and each stakeholder is asked to let Ms. Palen know if the stakeholder member no longer wishes to serve or if job or contact information has changed. An email will be sent to each stakeholder member asking for confirmation of the information on record.

**VI. Public Comment and Adjournment**

**Senator Locke** asked for any public comment. Upon hearing no request to comment, **Senator Locke** adjourned the meeting at 4:20 p.m..

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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### **Virginia Housing Commission September 17, 2014, 2 PM Senate Room A General Assembly Building**

#### I. Welcome and Call to Order

- Senator Mamie Locke, *Chair*

#### II. Proffers and Constitutional Rights

- T. Preston Lloyd  
*Land Use Attorney  
Williams Mullen, LLP*

#### III. Recurrent Flooding and Housing Issues

- Jim Redick  
*Norfolk Emergency Preparedness and Response*

#### IV. Work Group Updates

- Housing and Environmental Issues  
Senator John Watkins
- Affordable Housing and Real Estate Law  
Delegate Danny Marshall
- Common Interest Communities  
Delegate David Bulova

#### V. Public Comment and Adjourn

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### Virginia Housing Commission September 17, 2014, 2:00 PM Senate Room A, General Assembly Building

#### I. Call to Order

**Senator Mamie Locke**, *Chair*, called the meeting to order at 2:00 PM.

**Members in attendance:** Senator Mamie E. Locke, *Chair*; Delegate Daniel W. Marshall, III, *Vice-chair*; Senator George L. Barker; Senator John C. Watkins; Delegate David L. Bulova; Delegate Rosalyn R. Dance; 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. Proffers and Constitutional Rights

- **T. Preston Lloyd**, *Land Use Attorney, Williams Mullen, LLP*: Cash proffers are an alternative sources for funding public infrastructure that came out of an attempt to create better flexibility. This creates revenue for localities to address new needs for services that are created by those developments.
  - Conditional Rezoning came about because you cannot always create blocks of uses and then put them next to each other. If you have a block of industrial, block of commercial next to a block of residential, that doesn't fully address the ability to deal with land use challenges. Conditional rezoning is a way to address, in the context of a developer, offering conditions that would limit what they can do to make the governing body comfortable with that zoning determination.
  - There are different aspects of the Virginia code that apply to different jurisdictions relating to cash proffers, depending on the form of government and population growth that locality has experienced. However, they have many common elements, including that conditional rezoning must be voluntary, must be consistent with the comprehensive plan, and must be reasonable related to the rezoning.
  - The rise of cash proffers has been developing since the 1970's; Chesterfield County adopted the first Proffer Policy in 1990.

- Cash proffers were an arrangement accepted by developers because they thought they could make an “offer they could not refuse.” It was an ability to offset the perceived externalities created by rezoning. In recent years there have been voices on the development side that have spoken out against this process, through legislation and the courts. This issue of cash proffers has been heavily litigated in Virginia. It is a process that has been upheld by courts, as they are reluctant to get in a position of local legislative body.
- Regarding the Forest Ridge Project proposed in Chesterfield County, in 2006 there was rezoning of 22 acres. At the time, they received approval for 48 dwelling units on the property with cash proffers. In 2008 a new developer (Viridis) acquired the property; and in 2012 they asked for changes to increase the density and eliminate the maximum cash proffer contribution.
- With Maximum Cash Proffers, the County calculated a potential maximum cash proffer payment based on the impact of a single dwelling unit on new road, school, public safety and recreation infrastructure. With In-Kind Proffers the County may accept land dedication or the developer’s construction of some public facilities. If accepted, the County may consider credit against the maximum cash payment, and credit is equal to the cost of the public facility construction.
- Within the proffer policy, the county is divided into service districts. They divide specific categories of capital improvements into six categories. Three are also considered countywide: parks, libraries, and fire stations. The other three are schools, parks, and roads.
- **Lloyd:** In the Forest Ridge Project, the initial 2006 zoning case imposed maximum cash proffers, but received credit for cost of off-site storm drainage improvements to be constructed by the project owner. In 2012, in exchange for request to increase density & eliminate proffers, Viridis offered 1) to fund construction of an off-site right hand turn lane on Courthouse Road (arterial highway), and 2) amended plans for off-site storm drainage but still on the hook to fund construction.
  - Staff approved the increase in density, accepted the offer t to construct turn lane, denied the request to eliminate the cash proffers and did not address consideration of credit for cost of in-kind proffers against maximum cash proffer amount. The Planning Commission approved Viridis’ requests, including eliminating cash proffers. The Board of Supervisors ultimately denied the amendment due to refusal to pay maximum proffers.
  - This raises an issue on the proffer system, and whether there is voluntary-ness and the relationship of what is offered and the impact on county services. There is also a judicial challenge, with technical legal issues in connection to the case. The developer in Chesterfield raises four claims in their suit against the county: 1) Violates the 5<sup>th</sup> Amendments (Takings Clause), 2) violates 14<sup>th</sup> Amendments (Equal Protection), 3) denial is *Ultra Vires*, 4) violates Va. Equal Protection Clause.

- **Senator Barker:** Where is this in the judicial process now? What is the path to final resolution?
  - **Lloyd:** This initial complaint has been filed in Federal Court. I would expect some additional pleadings filed related to summary judgment motion. We are at least a year or so away from resolution on this particular case
- **Barker:** If the appellants prevail in this case, may that have a “chilling” effect on other jurisdiction’s willingness to amend comprehensive plans that would permit considerations of such rezoning?
  - **Lloyd:** All jurisdictions that use cash proffers will certainly be watching this case closely. If cash proffers are illuminated, it will require a whole new approach. That is very unlikely as some jurisdictions rely on cash proffers heavily to fund capital needs. There will be opportunities to revise cash proffers if the court does not totally invalidate the entire system.
- **Barker:** My concern is that the reaction of localities may be to amend the comprehensive plan in ways that will not even allow the consideration of such rezoning.
  - **Lloyd:** That could be an issue, and it is unclear how this could be resolved.
- **Delegate Bulova:** There seems to be two solutions to this. One is for the courts to approve the request of the developer. The second is to ask the locality to reset the cash proffer process and move forward with a different set of assumptions for what a cash proffer is. What direction do you think the solution will go?
  - **Lloyd:** I cannot predict what the solution will be. The basis for relief is outlined in a new section of Virginia Code (section 15.202208.1) from the last legislative session. Any time there is an unconstitutional condition associated with the zoning case, the applicant would be entitled to a award of compensatory damages and to an order remanding the matter to the locality. Short of the entire proffer system being thrown out, which is unlikely, I see localities that have limited the scope of what is used as major funding source for all sorts of capital improvements.
- **Delegate Dance:** As this is already a piece of litigation moving forward, are you just providing us information, and are not expecting any action from the Housing Commission?
  - **Lloyd:** Yes, that is correct.
- **Mark Flynn, Governor Appointee:** You mentioned a new piece of code from last session (Va. Code § 15.2-2208.1). That section creates a state court action, correct?
  - **Lloyd:** Correct.
- **Flynn:** And this case is filed under Federal District Court?
  - **Lloyd:** Correct
- **Flynn:** So will it be under the normal juris prudence of the Federal Court?



- **Lloyd:** The Federal Court will address the federal claims and will use this remedy as the basis for its ultimate outcome.
- **Flynn:** Regarding the Forest Ridge Project and its rezoning, did the original developer complain about the proffers?
  - **Lloyd:** I'm not sure if they did, although I'm sure they would have preferred to not pay the amount. There are those developers assume that is the price of doing business, and are willing to pay.
- **Flynn:** Regarding the section of Code on relief (Va. Code § 15.2-2208.1), if the applicant agrees to conditions, then he estopped from filing a claim under that section. Any thought on that under Nolan /Dolan/ Koontz?
  - **Lloyd:** In this case, the applicant refused to pay something the Board wanted them to pay, and, thus the Board refused their application. At that point, using Koontz, and use that to say it was an unconstitutional request.
- **Flynn:** Regarding the proffers, the plaintiff has claimed that there is still unused capacity in the school system. For counties, I believe the school capacity is the greatest financial issue. The alternative argument would be that the last families that move in have to pay the \$100,000 a piece. Wouldn't there be a problem with that formula?
  - **Lloyd:** It is a challenging policy position: how to fund improvements in a fair and equitable way.
- **T.K. Somanath, Governor Appointee:** Are cash proffers applicable for only residential and not industrial areas?
  - **Lloyd:** That's correct. It is based on dwelling units added. When you add a new commercial project, it will be a net revenue generator for most counties. It will create tax revenue that will support services used by the residents. In my experience, cash proffers are only geared towards residential units.

### III. Recurrent Flooding and Housing Issues

- **Locke:** Jim Redick, of Norfolk Emergency Preparedness and Response, could not make it today; and in his absence, we have an audio-video presentation to cover the topic of recurrent flooding.
- **Jim Redick, Norfolk Emergency Preparedness and Response:** Using existing plans and initiatives, Recurrent Flooding Sup-Panel has developed a document inclusive of all these efforts. There are over twenty actionable recommendations. The most significant recommendation is of an Incident Command System that would 1) establish a "resilience coordinator" and 2) establish a 4-Year Action Plan Cycle.
  - With this action plan, we propose and initial acceptance of 1.5 feet for incorporating sea-level rise into planning, and that is with caution. This is the number recommended by VIMS in their 2012 report.

- Caution association with the 1.5 feet sea level rise includes the following. It is a minimum number only. It represents sea level rise for inundation only, and does not take into account storm impact. Lifespan of a project must be considered; as with a longer lifespan, a more aggressive number should be considered.
- Unity effort is the theme of this paper, and working together will help us successfully adapt to this threat.
- **Elizabeth Palen**, *Executive Director, Virginia Housing Commission*: Last week in Jim Redick's full report there were two issues: 1) Real estate disclosures of houses that had previously flooded and 2) whether the state or each locality should determine which level building should be built relative to sea level.
- **Locke**: Even though there are a number of Hampton Road localities involved, this is not an issue that just affects Hampton Roads. Recurrent flooding is an issue across the state.
- **Barker**: Can you explain the chart in Redick's presentation? (Redick's presentation is available under "materials")
  - **Locke**: They represent estimations made by previous studies.
- **Barker**: The chart then suggests that the projection of severity has increased over time as more data has become available. Perhaps then 1.5 feet is too modest an estimation, and we may run out of time.
- **Locke**: The Study Commission agrees we do not have much time to address these issues.
- **Bulova**: Is there a time frame regarding the 1.5 feet just to get us started with an expectation that we would use a higher number in the future?
  - **Locke**: The Study Commission has two years to issue recommendations. VIMS did have some recommendation; however, we are running out of time to put a plan in place to implement those recommendations
- **Flynn**: The 1.5 feet is only the average sea level rise, and does not include storm surges. This is only part of the story.

#### IV. Work Group Updates

- **Common Interest Communities**
  - **Bulova**: Our first meeting will be on October 15, where we will discuss three issues: 1) CIC Bill of Rights (HB 322; Greason, 2014), 2) Non Judicial Foreclosures, and 3) Discussion of Homeowner's Association results.
- **Affordable Housing and Real Estate Law**
  - **Delegate Marshall**: On many work sites, there are people who do not necessarily speak English. Thus, they are not informed of asbestos issues from signage on site. We then asked the Asbestos Sub Work Group to address the issue.
  - **Palen**: The Asbestos Sub Work Group meeting in July brought forth three recommendations: 1) The Department of Housing and Community

Development (DHCD) will ask the Virginia Building Code Academy include a training module that includes awareness and review of asbestos as part of training.

- 2) Virginia Department of Labor and Industry was asked to make more conspicuous and user-friendly signs, possibly in other languages, too.
- 3) Contractors who were not being reputable and were reforming under another LLC.
- **Trisha Henshaw**, *Virginia Board for Asbestos, Lead and Home Inspectors*: The Asbestos Board discussed adding a regulatory amendment to incorporate language related to substantial identity. The Board decided that adding that language would be redundant because the first step to becoming a contractor is to go through the board for Contractors, where they would have already been evaluated pursuant to that substantial identity language.
- **Palen**: The consensus at the Sub Workgroup meeting was that problems were not with licensed asbestos contractors, but with regular contractors using day laborers.
- **Locke**: Were there specific recommendations?
  - **Palen**: One recommendation was to send a letter to DHCD suggesting they add some language to include the training modules regarding asbestos for the Virginia Building Code Academy. If we agree we can add that in a letter to them asking to put that forth.
- **It was moved and seconded that a letter be sent to DHCD as outlined.**
- **The motion passed.**
  - **Palen**: We may also want to send a letter to the Virginia Department of Labor and Industry asking them to make their signage more conspicuous. The Sub Workgroup was not in agreement as to whether the signs should be bilingual. That was the recommendation of the Sub Workgroup.
- **It was moved and seconded to send a letter to the Virginia Department of Labor and Industry.**
- **The motion passed.**
  - **Barker**: There was concern for people living in manufactured housing where was lack of adequate protection against frequent, unnecessary inspections from the property owner. I am working with representatives from the manufactured housing community to come up with a proposal to bring to the next meeting.
  - **Marshall**: We have a final meeting in November to take up the final two issues.
- **Housing and Environmental Issues**
  - **Palen**: We discussed two issues. The first had to do with building codes and insurance issues where the Building Code Official was not able to go up in

the bucket with the owner of the signage company because the owner's insurance did not cover the Building Code Official. With current practices, the Building Code Officials use the equipment on the job site. We met with the parties the issue seems to have been resolved by switching insurance carriers.

- **Bulova:** The second issue dealt with property assessed clean energy programs. The current legislation allows for Public-Private Partnerships with local government components that front-end fund the capital needed to energy efficiency improvements on property, which is then paid for slowly based on your property assessments. The problem is that it is never really used. Our existing program is not working, so we are looking into a solution. In a month or so we may have a draft bill to present.

#### V. Public Comment

- **Senator Locke** asked for any public comment.

#### VI. Adjourn

- Upon hearing no request to comment, **Senator Locke** adjourned the meeting at 3:20 PM.

# COMMONWEALTH OF VIRGINIA

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



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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### Virginia Housing Commission October 29, 2014 Waterside Marriot, Norfolk

#### I. Call to Order

Senator Mamie Locke, Chair

#### II. Speakers

- Church Hill North Transformation (Richmond)  
✚ Mr. Douglas Dunlap  
*Interim Director of Economic and Community Development*
- Rural Housing in the Commonwealth  
✚ Dr. Basil Gooden  
*State Director, U.S. Department of Agriculture, Rural Development*

#### III. Work Group Reports

- **Affordability, Real Estate Law and Mortgages**  
Delegate Danny Marshall, Chair
  - Inspection by Landlord of Manufactured Homes  
(bill draft)  
✚ Senator George Barker
  - Retaliation by Landlord/Virginia Residential Landlord and Tenant Act  
(HB 820, A. Lopez, 2014)  
✚ Mr. Chip Dicks, *Virginia Association of Realtors*  
✚ Ms. Christie Marra, *Virginia Poverty Law Center*

#### Other:

- Uniform Statewide Building Code: Accessible Units  
(SB 63, L. Puller, 2014)

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DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

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

- Expedited evictions/Virginia Residential Landlord and Tenant Act (SB 354, J. Edwards, 2014)
  - National Register of Historic Places (HB 1198, S. Surovell, 2014)
  - Asbestos Sub Workgroup  
Delegate Christopher Peace, Chair
    - Asbestos, Lead and Home Inspectors (SB 299, A. Ebbin, 2014)
    - Asbestos, Lead and Home Inspectors (HB 179, P. Farrell, 2014)
  - **Common Interest Communities**  
Delegate David Bulova, Chair
    - Homeowner Association Survey
    - CIC Owner’s Bill of Rights (HB 332, T. Greason, 2014)
  - **Housing and Environmental Standards**  
Senator John Watkins, Chair
    - Property Assessed Clean Energy (HB 766, D. Bulova, 2014)
- Other:
- Delegate David Toscano’s bill concerning liability during building code inspections

IV. Public Comment

V. Adjourn

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### Virginia Housing Commission

October 29, 2014, 1:00 P.M.

Norfolk Waterside Marriot, Franklin/Shangri-La/York room, Marriott Hotel  
Norfolk, Virginia

#### I. Call to Order

**Senator Mamie Locke**, *Chair*, called the meeting to order at 1:00 P.M.

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

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### II. East End Transformation

- **Douglas Dunlap - Interim Director of Economic and Community Development** for the City of Richmond ; Former Deputy Director of Planning for the City of Richmond:
  - He spoke about the East End Transformation, which is located at the Nine Mile Road exit and where he grew -up in Richmond.
  - As a planner he worked in this neighborhood.
  - To put project in context--see handout:
  - In its entirety, 35% of the city has households making less than \$25,000.
  - To be classified as affordable housing there should be no more than 34% of income spent on monthly housing meaning affordable housing should be \$500 per month and in the entire rental stock of this area only 1.9% at that level.
  - About 16% of the residents are without affordable housing in Richmond.
  - Statistically, 8,400 people earn less than 30% of median income and put 50% of their income toward their rent and utilities payments.
  - Neighborhood and residents are low- income because of the weakest school system and targeted limited resources.

\*\*\*There is a huge amount of public housing; close to 2,000 units within a one-half mile distance.

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DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

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

- Within three blocks you can see 500 units of public housing in one direction, and 500 units in the other direction.
  - See VISION (handout)
  - New rental units will serve a variety of income levels and provide for elderly to age in place.
  - Two new elementary schools and a new high school are ultimately part of the plan. The last new high school in this area was built 30 to 40 years ago.
  - Public/private investment/corporate citizens are helping to build the project.
  - Focus is on addressing concentrated property such as the Creighton Court neighborhood because it serves as a gateway to the neighborhood; such as the commercial corridor of 25th street and Nine Mile Road; it will provide a link to Tobacco Row.
  - In order to construct anew, 500 units in Creighton Court and vacant high school which is 20 acres will be razed; gained control of the school property from Richmond Public Schools.
- **Senator Locke:** If there is vacant school then why build a new one???
- Answer: School has been vacant for ten years and there are no plans to re-open the school as it is dilapidated.
- The goal is to replace the existing elementary schools of Woodville and Fairfield Elementary.
  - What are the guiding principles?
  - Community -based project \*\*\* Group called informed neighbors --work with tenants build trust and return to their neighborhoods.
  - Need strong services --employment, mental health services and public health services to rebuild the neighborhood.
  - Surveys with residents determined biggest needs.
  - One for one replacement--doesn't mean all 500 people will live in neighborhood--vouchers were given to those people whose apartments were demolished.
  - One move is optimal; Armstrong site is being focused on so as to complete the first phase.
  - Community Builders and other programs create a work-force division and partners for success.
- **Laura Lafayette:** will there be compliance levels like Broadcreek in Norfolk?

Answer:

- Similar in that residents have to work at least 30 hours per week to live there.
- In 2010, hosted a community charrette in which it was determined that the goal was to develop the 25th Street corridor.



- Where are we now??? There is a new found confidence among area citizens in that the physical development has begun.
  - There will be 100 to 125 units in the first phase; 20 to 25 single family homes, 50 to 60 public housing units, as well as workforce housing constructed.
  - The goal is to achieve 1/3 market rental, plus 1/3 public housing, plus 1/3 homeownership.
  - State-funding, low-income housing tax credits, as well as the Choice Program HUD up to 30 million dollars will fund the project.
  - Would hope for Housing Trust Fund, 1.32 million dollars as a dedicated funding source, to use as funding at some level.
  - Adaptive re-use of Armstrong High School will take place, 180,000 square feet, it had its own Tech Center, auto garages, there is a tremendous cost to renovate the school.
  - They will take down the buildings but create a monument; they will re-use material, save entry ways for the new structure.
- **Delegate Bulova:** As far as policy goes I would like to see dedicated money for the Housing Trust Fund.
  - **T.K. Somanath:** This is a comment not a question; the Housing Trust Fund should have eight or 10 different sources of funding --without these resources, soft funding won't happen.
  - **Laura Lafayette:** Richmond City, will it use bond capacity?
  - Answer: It has not yet been discussed.
    - School should be torn down by next summer and the storm water issues taken care of; then in fall of 2015 they should begin developing the first batch of houses; several townhomes and a mid-rise apartment building for the elderly.
  - **Senator Barker:** What are the job opportunities on Nine Mile Road?
    - They are not plentiful because of transportation, there needs to link where the jobs are located.
    - A recreation center like Croc Center which employs up to 150 people would be a good thing for the area.

### III. Rural Housing in the Commonwealth

- **Basil Gooden:** Has a farm in Buckingham County and it is currently up and running.

- This is a federal agency and there are 40 programs dealing with improving energy-efficiency.
  - Many of these areas are unable to accumulate assets and have limits to the amount of education people have received, this leads to an inability to start businesses.
  - They have a goal to expand affordable housing and rental housing.
  - Want to be able to house homeless veterans in same county where they originally lived and there is a higher proportion of veterans' that originally come from rural localities.
  - Also, there is a need for high quality medical services for rural communities.
- **Delegate Bulova:** What is actual cost per unit for single family homes?  
Answer: modest size
  - **Delegate Marshall:** Does this go to Rural Virginia? How do you define rural?  
Answer: federal guidelines
  - **Laura Lafayette:** What constitutes rural; is it population? How is money distributed?  
Answer: Most areas that are construed are in southwest Virginia, some in Southside; there is an effort to try to spread the money evenly, geographically.
    - There has been a shift from rural, originally categorized as Southside and Eastern Shore, now, southwest Virginia.
    - Strike-force initiative target high poverty areas in the Commonwealth.
  - **Senator Barker:** Is a county either all in or all out???
  - How do you differentiate within a county?
  - Answer: Rural in nature and feel; even if it has high density population , such as Lee, Dickenson, and Montgomery Counties.
  - All marching orders come from the federal government.
  - The census makes some areas no longer covered by this agency.
  - **Basil Gooden:** will get back to you with which areas are in and which are not covered.
  - **Delegate Marshall:** Most farm labor housing is migrant labor; can a person use funds for housing migrant labor?  
Answer: yes

- **Laura Lafayette:** Are loan denials under reported??
- Answer: Yes because of the following:
  - High cost of loans,
  - Unable to accumulate assets and limits to education, inability to start businesses,
  - Expanding affordable housing and rental housing,
  - Want to be able to house homeless veterans in same county where they originally lived and a higher proportion of veteran's come from rural locals,
  - Also need high quality medical services for rural communities.

#### **IV. Work Group Reports**

##### **Affordable Housing and Real Estate Law**

- **Senator Barker:** Manufactured Housing issue: all parties not yet on the same page.
  - Issue is landlord access to manufactured housing that is owned separately but the landlord owns the Manufactured Housing Park.
  - Look to section in code on cooperatives; find a balance between tenant and landlords.
  
- **Christie Marra and Brian Gordon:** We initially met the end of September about landlord retaliation. There are some final details to still work-out but all parties will be ready by the December full Commission meeting.

##### **Common Interest Communities**

- **Delegate Bulova:** The Common Interest Communities Workgroup met two weeks ago. At the meeting at the request of Delegate LeMunyon two questions were posed - (1) Can a home owners' association be too small? or (2) can an association be too large, as some in Northern Virginia?
  - Solution is to have local governments tackle this issue--either VACO or VML.
  - Delegate Tag Greeson had a property owner Bill of Rights bill assigned to this group. In response:
  - Rights and responsibilities brochure has been put together by Trisha Henshaw to develop outreach.

### **Public Comment**

- **Laura Lafayette:** Every \$250 student loan debt paid monthly, equals \$40,000 less spent on purchasing a house.
- **Barry Merchant, (VHDA):** We are in a period where investor sales have stalled on the upper end of cost; as profit continues to fall off. As prices rise opportunity falls for investors.
- **T.K. Somanath:** Statewide Housing Policy; we need a holistic approach to new communities.

The meeting was adjourned at 3:15 PM

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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### **Virginia Housing Commission December 10, 2014, 10 AM House Room C, GAB**

#### I. Welcome

✚ Senator Mamie Locke, *Chair*

#### II. Executive Order 32 *Advancing Housing Policy*

✚ Susan Dewey, *Executive Director*  
*Virginia Housing Development Authority*

#### III. Discussion and Recommendation of Bills:

##### 1. Retaliation by Landlord/Virginia Residential Landlord and Tenant Act (HB 820, A. Lopez, 2014) (\* bill draft)

✚ Chip Dicks, *Virginia Association of Realtors*  
✚ Christie Marra, *Virginia Poverty Law Center*

##### 2. Inspection by Landlord of Manufactured Homes (\* bill draft)

✚ Senator George Barker

##### 3. Foreclosure Timeshare Deeds of Trust/Public notice/Advertising (\* bill draft)

✚ Delegate Barry Knight

##### 4. Funding Clean Energy Programs/P.A.C.E. (\* bill draft)

✚ L. Preston Bryant Jr., *Sr. Vice President*  
*Infrastructure and Economic Development, McGuireWoods Consulting*

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DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER


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

5. National Register of Historic Places  
(HB 1198, S. Surovell, 2014)
6. Asbestos, Lead and Home Inspectors  
(SB 299, A. Ebbin, 2014)
7. Expedited Evictions/Virginia Residential Landlord and Tenant  
(SB 354, J. Edwards, 2014)

IV. 2015 Housing Stats/Sales and Projections

 Sonya Waddell  
*Regional Economist*  
*The Federal Reserve Bank of Richmond*

V. Arts District Development

 David Rau  
*Principal, 3North*

VI. Election of Chair

VII. Public comment/Adjournment

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

**Virginia Housing Commission  
December 10, 2014, 10:00 AM  
House Room C, General Assembly Building**

#### I. Call to Order

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

**Members in attendance:** Senator Mamie E. Locke, *Chair*; Delegate Daniel W. Marshall, III, *Vice-chair*; Senator George L. Barker; Senator John C. Watkins; Delegate David L. Bulova; 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. Election of Chair

- **Delegate Danny Marshall was elected by the Commission to serve as its next chair.**
- **Senator Mamie Locke was elected by the Commission to serve as its next vice-chair.**

#### III. Executive Order 32 *Advancing Housing Policy*

- **Susan Dewey, Executive Director, Virginia Housing Development Authority (VHDA):** The administration is committed to the development and implementation of a focused state housing policy agenda that will enable progress in meeting critical housing needs. Key housing priorities have been identified, including expanding efforts to address homelessness, further efforts to aid those with disabilities, addressing housing needs of the senior population, ensuring housing is an important contributors to Virginia's economic recovery, and that economic development investments further the revitalization of our urban and rural communities.
  - The executive order directs us to identify and implement actions to enable quality, affordable housing. The order authorizes Secretary Jones to establish working groups to provide for stakeholder input. Secretary Jones will also establish a core advisory body from core community leaders to address this effort; and once the advisory body is created, there will be a meeting in February, and additional number of sub committees will be established.
  - Throughout this process, we are committed to work closely with the Housing Commission.

- **Locke:** Has there been discussion on the Housing Trust Fund
  - **Dewey:** I anticipate discussion of that in our meeting in our initial meeting in February.

#### IV. Discussion and Recommendation of Bills

##### 1. Retaliation by Landlord/Virginia Residential Landlord and Tenant Act (HB 820, A. Lopez, 2014) (\*bill draft)

- **Christie Marra, Virginia Poverty Law Center:** The draft before you clarifies the existing law that prohibits retaliatory action by landlords. The language has been strengthened, and the prohibition to the Virginia Residential Landlord and Tenant Act (VRLTA) has been added.
- **Chip Dicks, Virginia Association of Realtors:** All new language is taken verbatim from the existing VRLTA, except for striking of the word “primary” on line 64.
- **Elizabeth Palen, Executive Director, Virginia Housing Commission:** This draft was heard in the workgroup meeting yesterday, but we did not have a quorum to move the appropriate recommendation.
- **It was moved and seconded that the Commission endorse this bill draft.**
- **The motion passed.**
- **Marshall:** Did Lopez want to be the patron of this bill?
  - **Marra:** Yes, that was my understanding.

##### 2. Inspection by Landlord of Manufactured Homes (\*bill draft)

- **Senator George Barker:** Currently, we have provisions relating to landlords and tenants as to when the landlords can enter a unit, but there is no law relating to similar situations with manufactured homes. In the absence of language in the code, it is currently covered in rental agreements, and they are inconsistent.
  - This is a situation with competing property rights. The owner of the manufactured home may own their unit, but they rent the land. We tried to find a middle group to provide some reasonable access to ensure compliance.
  - The park owner would have access to home units under three circumstances: 1) An annual check to ensure compliance, 2) emergency situations, 3) when there is reason to suspect the terms in the rental agreement are not being met.
- **Delegate Knight:** What if a manufactured home had a water or sewage issue that needed to be resolved, and the owner refused to address the issue. In these situations, would the park owner only be allowed to inspect the unit once a year?
  - **Barker:** I believe the scenarios you describe would be part of the rental agreement and then would fall under the third circumstance of entry. This is not limited to one annual inspection, but allows entry whenever there is reason to suspect noncompliance with the lease agreement.



- **Delegate Bulova:** I see no Terms of Service Agreement or Contractor Rental Agreement that is specific to the rights on the park owner. Can we have such legislation that would trump something so specific in terms of a contract? And when would this come into effect?
  - **Barker:** We had not yet discussed that, but we can add language to indicate that it would not replace an existing rental agreement but would apply to renewals and new agreements.
- **Marshall:** I have not had this issue in my part of the state, and it is my suggestion to not make this statewide. We can apply this to northern Virginia area, where this had been an issue.
  - **Barker:** I am not opposed to that, but I believe this is an issue that should be addressed statewide at some point.
- **Dance:** Was there a consensus?
  - **Barker:** No, there was on consensus on whether this should be applied statewide.
- **Mark Flynn, Governor Appointee:** The language is more clear if these phrases are separated into two sentences: “the landlord has the right to enter the dwelling unit no more than once per year to verify compliance with the terms and conditions of the rental agreement “ and “further, the landlord should have the right to enter the dwelling unit to (1) make repairs necessary or (2) if the landlord has reason to believe...” . This makes year that the second sentence is not subject to the one-year restriction.
  - **Barker:** I’m happy to make that change.
- **Marra:** This applies to situation where an individual owns their home, which happens to be a manufactured home. We believe this is a huge imposition on their property rights as a homeowner for the landlord to have a statutory right to enter their home to ensure compliance with the lot lease. The park owner should be able to look at the lot itself, and not inside the home, to ensure lease compliance and system maintenance.
- **Bulova:** Does the language proposed here improve the situation, or does it institutionalize it in a way that does not make it better.
  - **Marra:** I would say it institutionalizes it in a way that does not improve the situation. If language were added to require notice of these proposed annual inspection, that would be an improvement as it limits what is occurring now.
- **Senator Watkins:** Are these units classified as a “home” although they pay no real-estate taxes, but personal property taxes on the units?
  - **Marra:** Yes, manufactures homes are legally classified as personal property, which are registered with the Department of Motor Vehicles, and, in this case, would technically qualify as such.
- **Watkins:** This may not be the appropriate vehicle to address this issue.

- **It was moved that the Commission endorse this provision as amended.**
- **There was no second.**
- **Bulova:** While this is an issue that needs more work, and I hope we will continue our efforts and address it in the future.

### 3. **Foreclosure Timeshare Deed of Trust/Public Notice/Advertising (\*bill draft)**

- **Bulova:** The recommendation from the work group was unanimous that this moves forward and be endorsed by the Commission. The Press Association withholds the right to look at this in more detail, and return during session.
- **Delegate Barry Knight:** This bill regards advertising of timeshares under foreclosure. As opposes to putting up an advertisement in the paper for each individual timeshare under foreclosure, this legislation would allow one generic notice to be placed, giving a phone number and/or web address for the consumer to use that their discretion. The consumer can then flesh out specifics on individual timeshare units.
  - There will be less advertising in the newspaper, and they will receive less revenue. However, I support this as it costs the consumer less.
- **Bulova:** The language may look familiar because there is already a precedent for these changes.

- **There was a motion and second to endorse the bill draft.**

- **The motion passed**

### 4. **Funding clean Energy Programs/P.A.C.E. (\*bill draft)**

- **L. Preston Bryant Jr, Sr. Vice President Infrastructure and Economic Development, McGuireWoods Consulting:** The bill authorizes local government by ordinance to set up a loan program for energy efficiency projects and for water efficiency projects. This is for commercial properties only, but does include multifamily properties for five or more units. There is a suggestion to exclude condominiums, and we are accepting of such an amendment.
  - All loans are from private lending institutions, and are repaid through a property assessments issued by the local government. This permissive for the local government and voluntary for the property owner. The Bankers are protected, too, as the lending institution is given the authority to approve the loan.
  - We found a lot of interest in this program from jurisdictions and lending institutions.
- **Bulova:** I appreciate everyone's effort, and we are continuing to get endorsements from various stakeholders.
- **Knight:** Would this be applicable to condominiums units?
  - **Bryant:** As currently written, yes, but e are not opposed to exclude condominiums. This does not apply to single-family units.

- **Knight:** How many people vote to make it be voluntary? A simple majority or super majority?
  - **Bryant:** The property owner enters into the voluntary special assessment.
- **Knight:** In a situation of multifamily units with more than one property owner, what if three out of five owners agree to sign for the loan, does that qualify as voluntary?
  - **Bill Greenleaf, Executive Director, Richmond Energy Alliance:** This bill does not carry over to residential, so it may exclude that particular situation. Language may need to be added to address that issue.
- **Watkins:** I suggest condominiums be excluded.
  - **Bryant:** You have our commitment to do that.
- **Watkins:** What is the accounting on this in terms of depreciation? Does the property owner then have the ability to depreciate a significant investment over a period of, say, ten years; and what if P.A.C.E payments continue after that ten-year period?
  - **Greenleaf:** Since the property owner owns the boiler, I assume it would depreciate like any other piece of equipment. Regarding the longevity question, I do not know.
- **Watkins:** Is there interest on the loan?
  - **Greenleaf:** Yes.
- **Watkins:** Does he write the interest off on an annual basis?
  - **Greenleaf:** He could. It would be treated as a traditional bank loan.
- **T. K. Somanath:** Who gets the tax credits either from the state or federal government.
  - **Bryant:** There are no tax credits.
- **Somanath:** When you install the equipment, like solar equipment?
  - **Bryant:** Under renewable energy, tax credits go to the owner.
- It was moved and seconded that the Commission endorse the draft legislation (given the proviso that condominiums are excluded).
- The motion passed.

#### 5. **National Register of Historic Places (HB 1198, S. Surovell, 2014)**

- **Palen:** To designate schools that are fifty years or older to be designated as historic place, a staff person and a fairly high cost are required. We did not recommend this with that cost in place. The workgroup thought this was worthwhile, but it needed more study next year.

#### 6. **Asbestos, Lead and Home Inspectors (SB 299, A. Ebbin, 2014)**

- **Palen:** Through the asbestos sub committee, two letters were asked to be sent. One was sent to the Department of Housing and Community Development (DHCD)

asking them to add training modules regarding asbestos to the Virginia Building Code Academy. DHCD was agreed to our request.

- Second, letters were sent to let all appropriate parties know that asbestos signage is needed in both Spanish and English. However, we received a letter from Senator Ebbin detailing the topic discussed was not what he had originally intended. He had constituents who were licensed asbestos inspectors, and we were looking to address those who were not yet licensed.
- We would like to look at this again next session to address the issue of already licensed asbestos inspectors.

7. **Expedited Evictions/Virginia Residential Landlord and Tenant (SB 354, J. Edwards, 2014)**

- **Palen:** It was found that there do exist provisions in the code that allow for expedited evictions, and no new legislation needed.

V. **2015 Housing Stats/Sales and Projections**

- **Sonya Waddell, Regional Economist, The Federal Reserve Bank of Richmond:** We have seen a continued recovery in Virginia housing, but it is slowing. There is a consistent decline in the percentage and number of the foreclosure inventory since the first quarter of 2011. We are seeing the number of loans in foreclosure decline, while the number of mortgages originated holds steady.
  - Virginia is ranked 43 in total inventory of foreclosure across all states and DC; so only eight states had lower foreclosure inventory rates. The total inventory rate is related to the number of loans entering the foreclosure process and to the length of time a loan stays in foreclosure. The foreclosure process in a state, thus, can affect the inventory rate.
  - Foreclosure starts have also been falling in Virginia, with 4,440 new foreclosures in the 3<sup>rd</sup> quarter of 2014. We are seeing high number of homes entering foreclosures, but considerably lower number than we have seen in the past.
  - We are seeing a return to normal regarding the share of foreclosure inventory in Virginia. In the 2014 3<sup>rd</sup> quarter, the share of FHA and VA loans increase and share of subprime and prime decrease.
  - There is a continued decline in the 90+ day delinquency rate, with 1.8% of the mortgage inventory in 90+ day delinquency.
  - The shadow inventory peaked in Virginia at 81,000 loans in the first quarter of 2009. Now, in the 3<sup>rd</sup> quarter of 2014 about 38,000 are in the shadow inventory and that continues to decline.
  - There has been an upwards trend with home sales nationally, especially existing home sales. There is a national slowing or housing market growth, but there is a general upward trend.
  - This is true for the house price index as well. Virginia House price growth has been slowing, and is lower than that of the US. However, we are seeing positive

year over year changes. Over the twelve month ending in October 2014, Virginia saw a 1.7% increase in house prices. Most of areas in Virginia saw positive growth, but Harrisonburg, Lynchburg, and Danville saw a decline in house prices over the past year.

- Percentage of total owner-occupied loans in 90+ day delinquency is spread relatively evenly across the state, with numbers varying from quarter to quarter.
- The slowing growth of the housing market in Virginia is related to labor markets. US construction employment has been increasing more than Virginia construction employment. The Virginia labor markets are struggling, particularly in the important Professional and Business Services sector, which will affect the housing market.
- The large role of the federal government in Virginia's economy has been, over time, both positive and negative for the Virginia economy.
- **Marshall:** We hear that the reason that unemployment is down is because people are removing themselves from the labor force and stopped applying for jobs.
  - **Waddell:** Yes, in Virginia the labor force participation rate has been declining. The labor force includes employed individuals and those seeking employment, and unemployment is the percentage of those in the labor force that are unemployed. When the unemployed portion of the labor force stop seeking employment, they remove themselves from the labor force and decrease unemployment.
- **Marshall:** Martinsville has 11.8% unemployment, which is significantly better than in previous years. Are they actually doing better in terms of employment, or are people simply leaving the labor force and no longer applying for jobs?
  - **Waddell:** At the county level, we do not have that information on labor force, and no if people are actively seeking work.

## VI. Arts District Development

- **David Rau, Principal, 3North:** Our company provides a variety of architectural and design services; and we have primarily been involved in three projects in Richmond: 1) Quirk, a small gallery on Broad Street, has decided to expand the gallery to include a hotel. They hired us to renovate a building, the old Mosby Dry Goods Store, which is a historical, well preserved department store. There will be a variety of indoor and outdoor improvements to the building, all of which will be receiving rehabilitation tax credit through the Department of Historic Resources and the IRS.
  - 2) There is another proposal to redevelop a couple blocks to the west of Quirk. This area has commercial buildings that have been converted to apartments, and these units are part of a very low end of the market, that tends to define that area.
  - We would like to see a more diverse crowd enter that area. The concept was to renovate an empty corner lot, in the hope to turn it into a

community hub (with parking, pool, gym, etc.) and to aggregate smaller housing units around it.

- 3) The intersection of Belvedere and Broad is the busiest and most dangerous intersection in the city of Richmond. We propose building a roundabout at this intersection as both a gateway into the arts district and a way to lessen fatalities at this intersection.
- The United States Department of Transportation undertook a massive study about roundabouts, recommending roundabouts to reduce accidents and fatalities in American cities. Roundabouts don't stop crashes, but limits the fatalities, as accidents tend to be "side-swipes", not "T-bones."

## **VII. Public Comment**

- **Matt Bruning, Virginia Bankers Association:** Referencing the P.A.C.E legislation from earlier, we do not have a formal position. We are working through internal procedures, and will have a formal position to share with stakeholders by the end of this week. We look forward to continuing working on this issue.

## **VIII. Adjourn**

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

# COMMONWEALTH OF VIRGINIA

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DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### Housing & Environmental Standards Work Group

**June 16, 2014, 1:00 PM**  
**Senate Room A**  
**General Assembly Building**

- I. Welcome and Call to Order
  - Senator John Watkins, *Chair*
  
- II. Property Assessed Clean Energy
  - Steve Walz, *Director*  
*Department of Environmental Programs*  
*Metropolitan Washington Council of Governments*
  
  - Abby Johnson  
*Abacus Solutions*
  
- III. Sign Inspection /Section 113.1 of the Uniform Building Code
  - Delegate David Toscano
  
  - Ben Foster  
*High Tech Signs*
  
- IV. Public Comment
  
- V. Adjourn

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

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LAURA D. LAFAYETTE  
T.K. SOMANATH

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Housing and Environmental Standards Work Group June 16, 2014, 1:00 PM House Room C, General Assembly Building**

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

**Senator John Watkins, Chair**, called the meeting to order at 10:00 AM.

**Work Group members in attendance:** Senator John Watkins, *Chair*; Senator George Barker; Delegate David Bulova; Delegate Daniel Marshall; Delegate Barry Knight; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Brian Buniva; Ron Clements, *Virginia Building & Code Officials Association*; Tyler Craddock, *Manufactured & Modular Housing Association*; James R. Dawson, *Virginia Fire Prevention Association*; Chip Dicks, *Virginia Association of Realtors*; Sean P. Farrell, *Virginia Building & Code Officials Association*; John Hastings, *Virginia Housing Development Authority*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Ralston King, *Whitehead Consulting*; Shaun Pharr, *Apartment and Office Building Association*; Ed Rhodes, *Virginia Fire Chiefs Association*; Emory Rodgers, *Department of Housing & Community Development*; Neal Rogers, *Virginia Housing Development Authority*; Michael L. Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*; Jerry M. Wright, *Central Virginia Chapter-Community Association Institute*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Property Accessed Clean Energy**

○ **(HB 766, Bulova: 2013)**

This bill gave authority using a service district model; to voluntary provide service to provide financing for improvements using clean energy.

- **Delegate David Bulova:** This issue (PACE Program) was in front of the Counties, Cities and Towns Committee during the last legislative session. This program uses energy efficient building materials, and is an economic means of fostering new jobs.

- Virginia put a PACE program in place in 2009, but hasn't worked to establish programs to date.



- **Steve Waltz:** (*State Director of Mines and Minerals, Virginia Energy Efficiency Coalition*)
  - What is PACE? Gave an overview (see handout)
  - Discussed: concerns and issues for positive cash flow; priority lien status and lender consent.
  - It is typical as taxpayer in commercial properties to have lease term in buildings match up to who pays with who gets benefits
  - Need to match who pays with who gets the benefit from the program.
  - This program began with single family home lien status.
  - The tax assessment stays with property although it can be paid off when the property is sold.
  - Would it be an encumbrance on the property??
  - This would be conducted on a voluntary basis.
  - The PACE program effects water bills, including the installation of solar provided hot water.
  - Currently used for existing building stock; what about new homes?
- **Chip Dicks:**
- What about capitol obsolescence?
  - If equipment is up to twenty years old or fewer there is usually a cost savings that would lead to financing.
  - We have to fully examine the administrative structure and cost.
- **Abby Johnson, Abacus Property Solutions**
- **ESCO**
  - I am with an energy savings company.
  - This applies to both commercial and multi-family housing and is open for any bank to take part.
  - Closed- authority to sell paper to raise funds
  - Original mortgage owner is the owner of the paper on the program.
- **Mike Toalson:**
  - How do you keep positive cash flow?
  - Which other localities have used this model?

- **Answer:** The City of Fairfax, Virginia as well as Texas, Missouri, Florida, and California have all used this model.
- In Arlington County and the City of Charlottesville (who have used this program) the cities have invested in a viable project.
- Who is the good faith behind bond rating?
  
- If the mortgage company is to be subordinated, they would want consent of every mortgage lien holder so as not to form a contractual relationship.
  
- Has been used on projects for 340,000 units of affordable housing and is currently authorized by 30 states.
  
- Eight states have programs now and each locality could voluntarily opt in to the program.
  
- **Delegate Danny Marshall**
  - It generally takes 10 to 15 million dollars to renovate for existing units.
  
- **Chip Dicks**
  - Concerning multi-family units where there is up to \$100,000 in electricity-what happens with underwriting?
  - **Answer:**When we look at a ten- year period there are a number of variables--we have to factor in the unknown variables
  
- **Senator John Watkins**
  - Why use the vehicle of a service district; the legislation is better off in § 15.2 of the Code of Virginia. The underlying law in 2009 PACE legislation calls for a real estate disclosure.
  - How does the current tax structure fit in with utilities?
  
- **Mike Toalson**
  - How do you anticipate changes in utilities? I would hesitate to compete with local governments.

\* The full Virginia Housing Commission will decide whether or not a proposed bill concerning the PACE program should be crafted and endorsed for the 2015 legislative session.

### **III. Liability during Building Inspections Using Builders/Sign Company Equipment**

- **Delegate David Toscano**
  - High Tech signs, located in Albemarle County, needed to use their own equipment for local officials to see if they were complying with the building code.
  - In August, in Culpeper County, when a permitted sign goes up it must be inspected; and the building inspectors expect the equipment to be provided for them to use for the inspection.
  - The insurance company told the signage company it could not sign a hold- harmless agreement because of sovereign immunity.
  - But, the insurance company will not cover the inspector either so there is a catch 22; I am looking to the Housing Commission to provide a workable solution.
  - Virginia Beach has the same question about sovereign immunity --a locality can voluntarily opt out
  - The industry has used third- party inspectors for inspection of anywhere from three to 5,000 signs.
  
- **Mike Toalson**
  - Are there accidents in the industry that have caused death?
  - **Answer:** Provision allows limited waiver to counties.
  - Insurance companies??? Will make deals for work in instances like with school divisions
  - **Answer:**They operate but are not owned; at the job work site, the individual is required to be there by the county.
  - 
  - A Certificate of Insurance is given from the County to the contractor
  - The liability is for a person; not the job site.
  
- **Emory Rodgers**
  - We are discussing electrical signs; the inspectors need to get access and the process of getting signs inspected takes place with man lifts and bucket trucks that the builder has access to.
- **Chip Dicks**

- This relates to any job site, if the code official gets injured his remedy is through workers compensation
- Whose insurance coverage? Builders Risk Provision?
- The research needs to be more global on this issue.

\* A decision was made for the effected parties to meet with the Bureau of Insurance and local government representatives and attorneys to craft a solution for this issue. The proposed solution will then be presented to the Virginia Housing Commission and a determination made on how best to proceed.

#### **IV. Public Comment**

- **Senator Watkins** asked if there was anyone in the audience who wanted to offer public comment.

#### **V. Adjourn**

- Upon hearing none, **Senator Watkins** adjourned the meeting at 3:15 P.M.

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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### Common Interest Communities Workgroup

**October 15, 2014, 10:00 AM**  
**House Room C**  
**General Assembly Building**

- I. Welcome and Call to Order
  - Delegate David L. Bulova, *Chair*
- II. Non Judicial Foreclosures
  - Paul S. "Chip" Bliley, Jr.  
*Partner, Williams Mullen*
- III. CIC Bill of Rights (HB 332; Greason, 2014)
  - *Constituent from House District 32*
  - Trisha Henshaw  
*Executive Director, Common Interest Communities Board*
- IV. Discussion on HOA survey results
- V. Public Comment
- VI. Adjourn

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Common Interest Communities Work Group October 15, 2014, 10:00 AM House Room C, General Assembly Building**

#### **I. Call to Order - Common Interest Communities Work Group**

**Delegate David Bulova**, *Chair*, called the meeting to order at 10:00 AM.

**Work Group members in attendance:** Delegate David Bulova, *Chair*; Delegate John A. Cosgrove; Delegate Barry Knight; 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. Non Judicial Foreclosures**

- **Paul S. “Chip” Bliley, Jr**, *Partner, Williams Mullen*: Judicial Foreclosure. In Virginia, a deed of trust, when signed, the homeowner is placing legal title of the property to trustees, who are given power to sell the property if there is a default, or if the notices are given, etc. Often the foreclosure deals with the first deed of trust; first position, and other that real estate taxes from the foreclosure, any other lien are wiped out.
  - Issue with the Condominium Association and Homeowners Association (HOA) is that there is a non judicial foreclosure process to enforce that lien in the stature, which is similar to that in the deed of trust foreclosure. The statute says you can sell the property subject to prior deeds of trust.
  - The problem is that a 2003 Supreme Court case. The HOA brought a non judicial foreclosure and the bank enjoined the sale, on the basis that they did not believe they would receive the proceeds from the foreclosure sale.
  - The Supreme Court ruled that even though the statute said that it could be sold subject to the deed of trust that the commissioner of the foreclosure first had to pay off the first deed of trust. There was a strong dissent in that case, believing that “subject to” meant leaving the first deed in place, but majority ruled that It had to be sold free and clear of the first deed of trust.

- I agree with the dissent, and believe the ruling renders the non-judicial foreclosure method impractical.
- **Delegate Barry Knight:** Would you voluntarily ask for a deed in lieu of foreclosure?
  - **Bliley:** In that case the owner would give the property back to the bank. The problem may be that the people in financial distress could also have other subordinate liens against them, and the foreclosure sale wipes out all the other liens. The deed in lieu of foreclosure does not.
- **Michael Toalson, Home Builders Association of Virginia:** One issue is that people can be in the arrears with their HOA, and the threat was they could take your home. What is your experience with this? Is that common?
  - **Bliley:** I really do not know. I deal primarily with banks.
  - **Pia Trigiani, Common Interest Communities Board:** In the seven years at our firm, we have never taken one all the way to foreclosure. It is rare that we pursue foreclosure.
- How do we get the lenders to assist in getting people to pay their assessments? The lenders tell borrowers must pay their taxes, insurance and assessments. Payment of taxes and of insurance is enforced. They do not enforce the ability of the association to collect the assessment.
  - **Bliley: One solution is to** Change the priority between the condo and the deed of trust, like taxes, and then they would have to escrow it.
- But why wouldn't the lenders follow their documents?
  - **Bliley:** They would be in default for not paying their condo fees. If they wanted to foreclose, they could foreclose. The question is if foreclosure is wise.
  - **Trigiani:** Those are the same considerations the association would have to consider.
- **Toalson:** I have had some success with notifying lenders that are about to foreclose under the statute we are discussing; and the lender offers the money for the assessment because they do not want to see a foreclosure.
  - Regarding the Supreme Court ruling, reasoning of the majority was to honor subsection a of that section of the code: "the lien once perfected shall be prior to all other liens except... and sums unpaid on any first mortgages." Thus, this was interpreted that the first deed of trust must be paid off.
  - In regards to Del. Knight's comment, a deed in Lieu would not work for an association, as they do not want the deed.
- **Bliley:** In DC, the six-month condo liens have priority over the deed of trust. In a recent case, the court ruled that if the condo association moved to enforce that six-month they could wipe out the deed of trust. That is a situation that they give priority.

- **Trigiani:** The Uniform Condominium Act contains a limited priority lien, the last six months of assessment prior to the foreclosure prime the first trust. With the case Mr. Bliley describes there is concern that it extinguishes the first trust lien. There have been attempts to make the priority scheme in the Condominium Act and the Property Owners Association Act the same by the legislature. The recommendation of the Commission on Uniform State Laws is that there be a limited priority lien. It encourages the lender to be attentive to the assessments.
- **Bulova:** Even though non-judicial foreclosures are rare, what is the proper amount of oversight, what do other state have in terms of oversight or whether it's automatic? Regarding getting lenders to assist in assessments, we discussed something the Uniform Law Commission had put together. Are there other legal mechanisms that could accomplish the same thing?
  - **Bliley:** The Statute as it reads is pretty comprehensive notice requirement, more comprehensive in a condo situation that with a deed of trust. You get a sixty-day notice, which is plenty of time to go to court it need be. To enforce assessments, I cannot think of any other way to do it than through the Uniform Law Commission.
- If assessments were assessed, then lenders would collect that six-months of funds. Condo and HOA fees can be significant, and while there might be some circumstances where it may be beneficial to put the bank in as a collector for an HOA. You're putting the bank out there as the one collecting, retaining the fees and making the decision whether they should be paid. I believe that would add to the burden of homeownership. Those fees are the number one impediment to homeownership.
- **Bliley:** Foreclosure taskforce studies foreclosure for two years, and in the end decided to change nothing. The problem with foreclosures had nothing to do with the foreclosure process, but with loss mitigation and modification and other lender's problems.
- The foreclosure process for assessment liens is modeled after the deed of trust foreclosure. The associations are subject to the same rules and procedures of the game as lenders are subject to.
  - **Bliley:** It's more complicated than that; there are more safeguards built into it.
- **Knight:** If the non-judicial foreclosure route is rarely used, but is raising fears; what would be the effect of eliminating the non-judicial foreclosure route?
  - **Bliley:** I think elimination the non-judicial foreclosure, and using the judicial process would also eliminate any fear.
- **Trigiani:** I think that is exactly correct. Our recommendation is to go with the judicial process because we think it is safer and creates clearer title at the end of the process. However, we would like the six-month priority, but that is extremely unlikely. I would like to see the Property Owners Association lien have the same priority as the Condominium Association lien, and to clear up this Colchester issue, which I think is bad law.



- **Flynn:** Have there been attempts to rewrite the Colchester decision?
  - **Bliley:** The only case law I could find was an Attorney General citing it as good law.
- **Flynn:** Have there been any legislative proposals that got anywhere?
  - **Trigiani:** I've not heard of a case against it, but the dissent is very strong.
- **Toalson:** I would favor keeping the non-judicial foreclosure statute because it gives the associations another tool, and is far less expensive than the predator suit. Boards do not go recklessly foreclosing on people under this statute. This is a tool that is underutilized because there is a fear of spending on all of the costs without getting a result.
- I agree that this is about the money. It is difficult Association with little money to take the risk and go forward with this or even challenge the Colchester.
- **Bulova:** While non-judicial foreclosures are rare, there is no particular interest in eliminating this as an option.

### III. CIC Bill of Rights (HB 332; Greason, 2014)

- **Trisha Henshaw, Executive Director, Common Interest Communities Board:** During the Common Interest Communities legislative update this March, the board established the Ombudsman committee to discuss several issues: (1) unregistered common interest community associations, (2) associations lacking complaint procedures to resolve complaints from members to citizens, (3) registration issues from associations with defunct/dysfunctional boards, and (4) recommendations regarding HB 332.
  - The Committee will focus on education and outreach initiatives to alleviate these issues, and use the “bill of rights” proposed in HB 332 as part of the foundation for educational resources to be developed. The Committee will meet in December to develop an implementation plan.
- **Toalson:** Did you discuss webinars as a possible educational tool?
  - **Henshaw:** The Committee did specifically discuss webinars, and was hopeful to collaborate with other groups to help make that available.
- **Bulova:** How were you planning to distribute this information?
  - **Henshaw:** We are still discussing that topic. Internet based outreach and print information outreach are both possibilities that will be discussed in our December meeting.
- **Bulova:** What are the most commonly misunderstood topics that should be addressed with this educational initiative?
  - **Henshaw:** The number one complaint regards transparency. The law outlines clear requirements for open meetings, and there is a fear in volunteer leaders of boards in having open discussion.
- **Barker:** Yes, I've experienced that. Boards call executive session to exclude others from discussion.

#### IV. Discussion on HOA Survey Results

- **Bulova:** Regarding the HOA survey, the HOAs being established in Virginia are not considered too small. Interestingly, when asked if the issue should be discussed before the Housing Commission or left to the local government, the survey results were split evenly.
  - As discussed previously, the alternatives for small HOAs are either VDOT, with respect to roads, or the locality, regarding storm water management. Is this an issue for local governments or are there alternatives to consider regarding HOAs that are too small?
- **Toalson:** Many local governments are MS4 localities, where a permit is given from the EPA that authorizes discharge storm water. As these permits are reissued, more strict requirements are given. I think you will see fewer HOAs taking responsibility for the storm water in the future. Given the new level of oversight from the EPA, the responsibility will fall to the local government.
- **Knight:** In Virginia Beach, an HOA installed these packaging systems, as there was no central sewer system, and then allowed these package systems to deteriorate. The city eventually had to take responsibility for them. Localities that want new developments and growth that cannot put in these package systems will have to team up with the city.
- This is a big debate among many of our counties. They haven't come to us for any changes at the General Assembly level. It's still a local issue, but one that still needs to be addressed.
- **Bulova:** Are there things we can and should do at the General Assembly level? Or is this a problem that needs to be dealt with within the current confines of their authority.
  - A few localities have discussed it but haven't come up with a specific recommendation yet.
- **Barker:** Many HOAs got these systems when the costs were lower. With new regulations, the financial burden is astronomical. I have four extremely large HOAs, and they still find the costs burdensome. I can only imagine how smaller HOAs deal with the expenditures.
- **Toalson:** Localities are putting in efforts to survey where these storm water facilities are, how big they are, are they working, etc.
- **Bulova:** If enabling authority is needed for a new solution, we will rely on the VACOS and VMLs to provide solutions. This is an issue for the localities for the long term.
- **Knight:** Farmers won't have documentation on their storm water management. Its non-point source, and is not all the localities fault. I think we need to let EPA we've done a good work with storm water management for many years.
- **Bulova:** The survey results show that some HOAs are not too large to be governed by the existing provisions of the Code of Virginia. The major concern was that old

covenants that were poorly done create bad HOAs, There is no method, practically, to fix this issue. The larger the HOA gets, the harder it is to change faulty documents.

- **Barker:** I have four huge associations in my district, and they manage themselves very well.

**V. Public Comment**

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

**VI. Adjourn**

- Upon hearing no request to comment, **Delegate Bulova** adjourned the meeting at 11:00 AM.

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### Common Interest Communities Workgroup

December 10, 2014, 9:00 AM  
House Room C  
General Assembly Building

I. Welcome and Call to Order

 Delegate David L. Bulova, *Chair*

II. Timeshare Estates: Foreclosure and Advertising in the Newspaper

 Delegate Barry Knight

III. Public comment/Adjournment

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

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SENATOR JOHN C. WATKINS  
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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Common Interest Communities Work Group December 10, 2014, 9:00 AM House Room C, General Assembly Building**

#### **I. Call to Order - Common Interest Communities Work Group**

**Delegate David Bulova**, *Chair*, called the meeting to order at 9:00 AM.

This meeting will address one issue, foreclosure and advertising in newspapers, in order that all interested parties may be heard on the topic and a determination made on whether or not the proposed bill should be brought before the full Commission.

**Work Group members in attendance:** Delegate David Bulova, *Chair*; Delegate Barry Knight; Senator George Barker; Janice Burgess, *Virginia Housing Development Authority*; 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*; and Jerry Wright, *Community Associations Institute*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Timeshare Estates: Foreclosure and Advertising in the Newspaper**

- **Delegate Barry Knight:** There are a fair share of foreclosures on timeshares; people find they cannot afford them, or have other priorities and thus a foreclosure occurs. This proposed bill has newspapers advertising a particular timeshare at an address, giving details of a website and/or phone number to further flesh out all specifics of that timeshare that they may be interested in purchasing .
  - This bill will make it cheaper for the consumer; however, the newspaper is not going to get as much revenue. Instead of mentioning every single timeshare unit, the paper will give details for the consumer to access the specifics of a timeshare. The press may have a problem with it, but I side with the consumers, as it will cost them less money.
- **Christopher Nolan**, *American Resort Developers Association*: Representing resort developers nationally, we support this legislation.
- **Ginger Stanley**, *Virginia Press Association*: In 2012, Delegate John Cosgrove brought us legislation that dealt with this issue from the association standpoint. We came up with compromise language that the Press Association was not thrilled with, which narrowed

the amount of information on a timeshare that citizens could see asking them to get information on that. Since this legislation in 2012, I have not gotten any information back on whether there has been any lessening of sales, or other negative impacts.

- We did compromise with this language in 2012, so I am reluctant to be critical of this measure now. However, if we get data in the future that indicates a problem, we would like to discuss it then.

- **Motion was passed to sent legislation to the Full Commission.**

### **III. Adjourn**

- Upon hearing no request to comment, **Delegate Bulova** adjourned the meeting at 9:30 AM.

# COMMONWEALTH OF VIRGINIA

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



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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### **Affordable Housing, Real Estate Law, & Mortgages Work Group May 21, 2014, 10 AM House Room C, GAB**

##### I. Call to Order/Introductions

- Delegate Danny Marshall, Chair

##### II. Brief Discussion

Uniform Statewide Building Code; Accessible Units set-aside (SB 63, Sen. Puller, 2014)

##### III. Asbestos, Lead, and Home Inspectors; notice to asbestos workers (HB 179, Del. Farrell, 2014)

- Delegate Peter Farrell
- Tim Butera
- Christopher West

##### IV. Expedited Evictions; Virginia Residential Landlord and Tenant Act (SB 354, Sen. Edwards, 2014)

- Wendy Jones, *Williamson Road Area; Business Association Inc.*
- Chip Dicks, *Virginia Association of Realtors*
- Shaun Pharr, *AOBA-metro Washington and VAMA*

##### V. Discussion of Renewal of Rental Agreements

- Delegate Rob Krupicka
- Maurice Barboza, *Constituent*
- Chip Dicks, *Virginia Association of Realtors*
- Shaun Pharr, *AOBA-metro Washington and VAMA*

##### VI. Retaliation by Landlord (HB 820, Del. Lopez, 2014)

- Delegate Alfonso Lopez
- Christie Marra, *Virginia Poverty Law Center*
- Chip Dicks, *Virginia Association of Realtors*
- Shaun Pharr, *AOBA-metro Washington and VAMA*

##### VII. Public Comment and Adjourn

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

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

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Affordable Housing, Real Estate Law, and Mortgages Work Group May 21, 2014, 10:00 AM House Room C, General Assembly Building**

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

**Delegate Danny Marshall**, *Chair*, called the meeting to order at 10:00 AM.

**Work Group members in attendance:** Delegate Daniel Marshall, *Chair*; Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Delegate Chris Peace; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association of Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

The members introduced themselves and Delegate Chris Peace was introduced as a new member.

#### **II. Uniform Statewide Building Code; accessible units (SB 63, Puller, 2014)**

- **Elizabeth Palen** described the content of the bill, which called for a set-aside of dwelling units for those with issues of accessibility.
- **Senator Linda Puller** currently has other items on her agenda and doesn't wish to pursue this topic in discussion this interim.

#### **III. Examination; initial asbestos worker license applicants (HB 179, Farrell, 2014)**

- **Delegate Peter Farrell** led a discussion of the need for safe guards for employees working with asbestos as presented in HB 179.



- The bill has merit—deserves more attention; it tries to inform workers that they are entitled to a safe environment.
- The bill has passed the Senate several times but not the House.
- The bill deserves a chance to be looked at by the Commission. We don't want suspended contractors easily returning to business if the contractor is not doing as he is supposed to regarding asbestos removal.
- We don't want suspended contractors to come back into business without stiff penalties.
- There appears to be broad bipartisan support.
- **Tim Butera, Labor: 1151 Reston, Virginia:**
  - I represent 50% of the asbestos contractors; industry generally supports this so there is a level playing field among contractors.
  - The background is that this is a bill dealing with abatement of hazardous materials. It is a death sentence for a worker or someone walking by a site or a first responder if they are unaware of asbestos. They need protection as does the environment and persons working to abate the asbestos.
  - Industry has established a pattern where short cuts are taken; we need the eyes and ears of the people affected by the regulatory action to be able to report infractions. Also need to have the Board for Asbestos, Lead, and Home Inspectors empowered to stop toxins that are released into the atmosphere.
  - There is a need to give tools to those on the ground if violations of standards take place.
  - This bill's content empowers the Board to immediately cease work on a particular project to make the job environmentally safe.
  - Cannot shortcut this process to save dollars.
- **Delegate Marshall:** Do we know of documented cases or are we trying to prevent this from occurring?
- **Tim Butera:** Many violations have taken place that cause a real danger. I will submit information to the Commission.
- **Delegate Marshall:** Are you referring to residential and commercial?
- **Tim Butera:** Commercial, not residential; the buildings are primarily vintage 1910 to 1975 public buildings—mostly government buildings and schools. Asbestos is safe when encapsulated but not otherwise. This is a hazard that leads to death and injury. We need licensure of individual workers and industry.
- **Renee Pulliam:** I am concerned that the burden is on the company. Shouldn't there be a distinction for workers themselves having followed safety protocols? Does this place too much burden on the company, not individual workers? How does the Board know protocols are violated?
- **Delegate Farrell:** The bill is beneficial to a good contractor as well as the worker; I am open to learning all the answers to this issue as the VHC studies the issue.

- Agency (DPOR) can spot check if there is a complaint. Individual licensees are regulated by DPOR.
- **Renee Pulliam:** I am concerned that the company may lose their license.
- **Trisha Henshaw,** *Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors:* I have been monitoring this issue. Also, OSHA is involved in inspections. In order to fine or suspend a contractor, a complaint needs to be filed with the Board. The Department of Labor and Industry also plays a role.
- **Delegate Marshall:** What type of education is needed?
- **Trisha Henshaw:** Workers, inspectors, and contractors need a contractor’s license and asbestos training, which is all laid out by the Code of Federal Regulations, and then there is approval by the Board.
- **Delegate Marshall:** What about renewal training? What are limits of liability; is this part of regulations?
- **Trisha Henshaw:** That is not under the Board’s purview.
- **Delegate Marshall:** How many complaints have been filed statewide?
- **Trisha Henshaw:** Usually the complaints are filed through the EPA. Only one through Asbestos and Lead Board—and that would only be for a licensure issue. This is a contractor issue.
- **Delegate Chris Peace:** I have an old house and the regulations for asbestos are extensive—not unlike on-site soil training; asbestos people are already very regulated.
  - A lot of postings to be placed in a workplace--simple posting may be better. Already a lot of burden on businesses—maybe we should just say “post this information.”
- **Delegate Farrell:** I think the bill warrants more discussion.
- **Senator George Barker:** You said DPOR had one action. Have there been other settlements?
- **Trisha Henshaw:** We don’t enforce compliance with contractors; just provide Board licensure.
- **Senator Barker:** So there have been other actions without Board action that have been sent to EPA?
- **Trisha Henshaw:** Yes.
  - Code of Federal Regulations sets out what the contractors have to do; the regulations have been around since 1988 or early 1990s.
  - Intent is for asbestos contractors and OSHA to addresses the issue; bill needs to be tweaked.
- **Chip Dicks:** Worker safety issue addressed through management and labor agreement, so addressed in large companies. We are talking about companies hiring general laborers; intent of bill is to provide for the general laborers.

- What is the impact of the failure of the asbestos contractor not giving notice to employees—does it impact workers’ compensation because they have failed to comply? Employees cannot sue the employer, cannot go beyond workers’ compensation. Maybe these issues need to be addressed.
- **T.K. Somanath:** Extent and scope of the work is determined by the environmental engineers and the contractor submits paperwork. There are a lot of fly-by-night contractors. Several postings on site; agree poster may be useful—in English and in Spanish. We don’t want to make process too onerous.
- **Bob Bradshaw:** Individual notice to individuals may not be necessary if we are discussing licensed contractors in Code §§ 54.1-516.1 and 54.1-516.2 in the bill.
- **Trisha Henshaw:** Board of Contractors allows that a contractor cannot have his license revoked or suspended and then form a new entity. The Board of Asbestos and Lead does not have a problem with this provision. It is in the proposed bill.
- **Delegate Farrell:** Should this be the crux of the bill?
- **Senator Barker:** When individuals testified in House General Laws Subcommittee 3, they felt their health was being jeopardized and didn’t know how to report it.
- **Mark Flynn:** Should this be done through the regulatory process? Assuming lines 14-22 of the bill, can Board do this under existing law?
- **Trisha Henshaw:** Probably not because that would be more stringent than federal law.
- **Delegate Marshall:** Please have a sub-workgroup meet and return with outcomes; **Delegate Peace,** please serve as the chair of this sub-workgroup.

**IV. Virginia Residential Landlord and Tenant Act; expedited evictions for nonremediable breaches; continued disturbances of the peace (SB 354, Edwards, 2014)**

- This bill was brought to the Commission from Senator Edwards because there is a need in Roanoke to evict tenants that are causing havoc to the revitalization of downtown and hurting other commercial enterprises.
- **Wendy Jones, Williamson Road Property Owners’ Association:**
  - I am looking at this issue from the commercial landlord side, not residential property, and need clarification about the parameters of self-help.
  - Commercial property that is located in downtown Roanoke was a restaurant and is now a night club and has been the subject of 77 police calls in the last six months for assorted complaints.
  - The restaurant is a health and safety issue for residential neighbors; want clarification concerning how to deal with this issue under commercial law.
  - Would like to come back in the fall and discuss this issue further.
- **Chip Dicks:** Original bill drafted to the wrong section of the Code of Virginia, in the Virginia Landlord Tenant Act. There is a new trigger to have it become effective if the landlord owns three properties.

- Unlawful detainer for residential, common law for commercial, can use self-help for removing the tenant.
- Problem is the police department doesn't think self-help is allowed.
- Grimes Creasy, an expert in this area and Roanoke lawyer, will hold a session with landlords and police and inform the landlords that there is no need to go to court to evict when dealing with commercial property.
- Need to clarify what the parameters are for self-help and removal of the tenant.
- When landlord changes lock or court evicts, if tenant breaks back in, that is a criminal offense.
- Would like to bring back this issue in the fall.
- **Shaun Pharr:** I think the bill needs clarification and will work with Chip and others this summer and will work with Chip to generate a draft and send it to Elizabeth.

**V. Virginia Residential Landlord and Tenant Act; retaliation by landlord; rebuttable presumption. ( HB 820 Delegate Alfonso Lopez)**

- This issue is regarding the retaliatory eviction of a tenant. **Delegate Alfonso Lopez** asked Christie Marra to speak on his behalf.
- **Christie Marra**, *Poverty Law Center*, began with a Power Point presentation looking to what other states are doing (see attachment).
  - Overall purpose is not to create a new right but give more power to enforce the rights the tenant already has been given. These are actual examples from the field; evidentiary standard is a problem with week-to-week or month-to-month leases.
  - Case one: Landlord turned off heat in the middle of the winter, then landlord sued to evict, but tenant couldn't prove it was retaliatory. Case two is the same but with water shut off.
  - For example; if a tenant filed a tenant's assertion or motion in general district court because the heat or water was unlawfully turned off the tenant can rarely prove this is done in retaliatory fashion.
  - Never or rarely can put on evidence because the tenant needs the intent to be proved.
  - Uniform act has rebuttable presumption that the act was retaliatory.
  - Nonpayment of rent means it never comes into play.
  - A landlord may not terminate a periodic tenancy because tenant exercised the right to sue the landlord by taking him to court.
  - Within one year, according to the bill, there is a presumption it was done in retaliation, which means the tenant can put on evidence. If Virginia were to adopt the Uniform Law, the landlord could then show a legitimate reason for termination of the lease.
  - Sixteen states have adopted the Uniform Law and 19 states have not adopted the Uniform Law.

- Burden is always on tenant regardless of proximity of time; virtually impossible to know how often this issue comes up.
- If tenant caused Building Code violation, there is never a presumption that the landlord acted improperly by evicting the tenant.
- **Chip Dicks:** Where does it say that in this bill?
- **Christie Marra:** Subsection C.
- **Chip Dicks:** If the tenant asserts a tenants' assertion, then they have burden of proof under the Rules of Evidence, defense of eviction.
- **Christie Marra:** Now they have to prove that the landlord intended the action, the bill says if the tenant took protected action, the burden of proof would shift.
- **Chip Dicks:** Aren't there other remedies if water is turned off?
- **Christie Marra:** Yes.
  - After a tenant exerted his remedy, then a landlord gave a termination notice. Proving intent is extremely difficult. The bill creates a rebuttable presumption.
  - VRLTA is exempted.
- **Chip Dicks:** Would you agree that Delegate Manoli Loupassi's legislation from the 2014 Session, the amendments to the Virginia Residential Landlord Tenant Act (VRLTA), creates a situation where exempted property is taken care of?
- **Christie Marra:** I do not agree. Month-to-month tendency is still covered by VRLTA.
  - One of the safeharbor provisions for the landlord and one of the four reasons a rebuttable presumption does not arise is if the tenant is behind on rent. The trier of fact must find for the tenant if a tenant proves that tenant filed prior to getting a determination notice.
  - Is there a lessor standard? There was discussion during session that it was a prima facie case if the acts were sufficient as a matter of law to create an inference and it was up to the landlord to then show there was another reason.
- **Chip Dicks:** Is the problem that the judge is not even hearing evidence on retaliatory conduct?
- **Christie Marra:** Never makes it to court. Their clients were working in unhealthy conditions and didn't say anything because they might be put out in either five or 30 days.
- **Renee Pulliam:** Why should we change legislation if not even going to court? Why not use education instead?
- **Christie Marra:** Essentially, the presumption makes it worthless to go to court.
  - Six months chosen as reasonable amount of time to retaliate.
- **Delegate Lopez:** Means a lot to my district because of the many languages spoken and interesting power dynamics. The bill is trying to make it easier to deal with an impossible situation for tenants to prove intent of the landlords.

- **Senator Barker:** Following up on six-month period, have you talked with anyone in other states? Does six months make a difference?
- **Christie Marra:** I will follow up and get that information from other states.
  - If a legal aid lawyer comes in and is asked to take the case under current law, the answer is no because there no way to prove that the landlord is taking action due to tenant asserting his/her rights.
- **Delegate Lopez:** Look forward to working with working group on this issue and will work for a solution regarding periodic tendency cases.
- **Renee Pulliam:** The bill doesn't indicate it is month-to-month or week-to-week lease or longer lease term.
- **Senator Barker:** More important where the tenant is within the length of the lease; how close it is to the renewal date.
- **Shaun Pharr:** I have opposition; this bill is not drawn narrowly enough and has a completely undefined subset. I also prefer the term "housing provider" not "landlord" be used during this discussion. The entire premises of VRLTA is turned around, so now the presumption is housing provider is acting in bad faith. The housing provider is at risk by having to rebut presumption of acting badly. There is a fundamental problem with the law itself. There is an undefined and tiny universe this bill addresses and this approach is overbroad.
- **Chip Dicks:** The guts of the bill is to switch the burden of proof. If the burden was switched, there still is a problem with the word if problem with word intent, but may not have problem with tenant showing landlord was retaliatory.
- **Kelly Harris-Braxton:** To respond to constant cases brought against landlords; I don't see it happening if the advocacy association won't bring a case and use their resources if they know it is impossible to win.
- **Mark Flynn:** What about striking the intent language?
- **Christie Marra:** It's all about timing.
- **Delegate Lopez:** Would like to get together in a smaller group and return with revised language on renewal of rental agreements.

**VI. Use of a software product that is used to set rental rates without using the actual market rate values.**

- **Delegate Rob Krupicka's constituent Maurice Barboza** spoke to the issue:
  - Resident of Hunting Point Apartments, affordable housing built in 1950s in Alexandria.
  - The management company has a product they use called LRO Rainmaker software and it creates a rise in rent not tied to improvements or length of time a person has rented the property.
  - Existing rent shouldn't be linked to software.
  - Retaliatory intentions for steep raise in rent.

- 32.8% rent increase, asked for reconsideration and in keeping with actual market, not able to renegotiate or adjust despite drop of comparable units. LRO pricing, like airlines, is based on a variety of features.
- What is the genuine market rate and how to recalculate—not on renewal letter day—primary driver. How much will the market bear? Is this a practice that is unfair to existing renters?
- **Delegate Marshall:** Was this a bill in 2014? Normally work on legislation instead of developing; we would have preferred draft legislation.
  - There are many issues to determining if it is proper to raise the rental rate based on calculating the month when the market is at its highest and if this is a proper action.
- **Delegate Marshall** asked constituent to create draft legislation and forward it to Elizabeth Palen; if that is done, we will take up a discussion of the draft at the next Affordable Housing, Real Estate Law, and Mortgages Work Group meeting.

## VII. Public Comment

- **Delegate Marshall** asked for any public comment.
- **Elizabeth Palen:** Please note that we now have a twitter feed with pertinent housing articles as part of the Virginia Housing Commission website. There is no need if you haven't already done so to join Twitter; you may just read articles and enjoy being updated on housing issues.

## VIII. Adjourn

- Upon hearing no comments, **Delegate Marshall** adjourned the meeting at 12:15 P.M.

# COMMONWEALTH OF VIRGINIA

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DELEGATE DANIEL MARSHALL, III, Vice-chair  
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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### **Affordable Housing, Real Estate Law, & Mortgages Work Group September 17, 2014, 1 PM Senate Room A, GAB**

#### I. Call to Order

- Delegate Danny Marshall, *Chair*

#### II. Manufactured Home Privacy/Lease Issue

- Senator George Barker
- Constituent  
*Prince William Manufactured Home Community*
- Tyler Craddock  
*Virginia Manufactured & Modular Housing Association*
- Ralston King  
*Manufactured Housing Communities of Virginia*

#### III. Sub Work Group Report on Asbestos (HB 179; Farrell, 2014)

- Delegate Christopher Peace

#### IV. Status Update

1. Retaliatory Eviction
2. Commercial Tenant Eviction

#### V. Public Comment and Adjourn

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Affordable Housing, Real Estate Law, and Mortgages Work Group September 17, 2014, 1:00 PM Senate Room A, General Assembly Building**

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

**Delegate Danny Marshall, Chair**, called the meeting to order at 10:00 AM.

**Work Group members in attendance:** Delegate Daniel Marshall, *Chair*; Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association of Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Dept. of Housing & Neighborhood Preservation*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Sub Work Group Report of Asbestos (HB 179; Farrell, 2014)**

- **Elizabeth Palen, Executive Director, VHC:** The workgroup made recommendations: (1) the Virginia Department of Industry explore ways to make workers and others on the job site be more aware of asbestos issues in a more user friendly way with more conspicuous signs. There was no agreement whether the signs should be in Spanish or other languages.
  - (2) A letter was sent to the Department of Housing and Community Development asking that the Virginia Building Code Academy include a training module for building code officials that includes awareness and review of asbestos as part of its training for its building inspectors.

- (3) Trisha Henshaw agreed to ask the Virginia Board for asbestos health inspectors to propagate legislation regarding changes in name only of rouge contractors who have previous violations.
- **Trisha Henshaw**, *Executive Director, Board for Asbestos, Lead, and Home Inspectors*: I took the concept back to the board, and we decided. Because the Board for Contractors is the precursor to getting licensed as a contractor through the Asbestos, Lead and Home Inspectors Board, it would be duplicative and cause delays to have that entity go through the same process through the Asbestos, Lead and Home Inspectors board. We are confident that the provisions under the Board of Contractors would identify any issues.
- **Palen**: This committee needs to decide if they want to the Full Commission to send a letter to the Department of Housing and Community Development, and send a letter to the Virginia Department of Labor strongly encouraging them to provide better signage.
- **Marshall**: Was there a consensus in the workgroup to do that?
  - **Palen**: Yes.
- **Marshall**: What is this work group's opinion?
- **The workgroup agreed with the subcommittee's findings, and it went forward to the Full Commission.**

### III. Status Update

- **Commercial Tennant Eviction**
- **Palen**: In Roanoke, some commercial businesses were having issues with raucous tenants, and the landlords felt they needed more tools to evict them. We looked into language changes on how to more smoothly evict commercial tenants. A previous meeting postponed until November, and the issue is still to be resolved.
- **Retaliatory Eviction**
- **Christine Marra**, *Attorney, Virginia Poverty Law Center*: Last session, Delegate Lopez introduced legislation that would change the standard of proof in retaliatory eviction cases to match up with what many other states do.
  - If a landlord takes certain negative actions toward the tenant with a certain period of time after a tenant committed a protected act, then there would be a presumption due to the closeness in time that the action of the landlord is retaliatory. This piece of legislation was designed to insert that presumption into law.

### IV. Manufactured Home Privacy/Lease Issue

- **Palen**: Sen. Barker brought this issue to the district because he was approached regarding a situation where some constituents are living in a manufactured housing community, where they rent the land, but not the manufactured housing. The landlord has been conducting periodic, unannounced inspections of the individual manufactured homes due to the park owner's suspicion that there were too many people living in each home. While

there is a provision in their lease that allows the owner of manufactured housing park to come into their homes in emergencies, this was not one of the outlines reasons you could enter their homes.

- **Tyler Craddock**, *Virginia Manufactured & Modular Housing Association*: We have met with Sen. Barker. The tenants in this community are being asked to sign lease provision that provides the ability for the park owner to come into an owned home and conduct these inspections. In this instance, this is not addressed in the Virginia Manufactured Home Lot Rental Act. We are happy to work with Sen. Barker to close this legislative hole.
- **Palen**: The organizations that represent the manufacture home communities are taking an active role in realizing there is a gap. This particular issue happened in Prince William County, but there have been other similar issues in other localities throughout the Commonwealth in the past.
- Senator Mamie Locke : Are we talking about a situation were people are renting the land but do not own the manufactured home?
  - **Marshall**: They are renting the land, but own the manufactured home.
  - **Palen**: Its analogous to a Home Owner’s Association, where the park owner usually takes care of electrical and sewage issues of the park. However, in a Home Owner’s Association they do not enter your home even those are services provided to you as a homeowner.
- **Renee Pulliam**, *Virginia Apartment Management Association*: Is it detailed that a park owner can enter a residence in an emergency?
  - **Palen**: Yes, that is described in landlord tenant Law, not under the manufactured home.
- **Marshall**: Does landlord tenant law apply under this situation?

**Chip Dicks**, *Virginia Association of Realtors*: It is not traditionally covered by these sections of the Code
- **Marshall**: Can the person who owns the land, but not the manufactured homes have authority rights to inspect he home they do not own?
  - **Dicks**: Unless it’s specified otherwise in the lease, the unilateral inspection would not be allowed.
- **Toalson**: Could liability arise for the property owner in other instances, like if the manufactured had issues regarding compliance with the Property Maintenance Code? If one of the lessee’s invitees were injured by some condition in the manufactured home, could they attempt to hold the landowner liable under the theory that they had an obligation to ensure the manufactured homes on their lots are under full compliance with applicable codes and regulations?
  - **Dicks**: There are generally provisions in the lease that address liability issues. Under the Property Maintenance Code, the owner or occupant is responsible for compliance with all aspects of the building code. Therefore, the local

building code official could enforce those provision against a violator, whether that be the occupant, or owner of the manufactured home in this case, or the underlying lot owner.

- **Toalson:** Would the park owner’s recourse would be to ask for the local authority to conduct an inspection based on a suspicion rather than attempt to perform an inspection himself?
  - **Marshall:** To clarify, the issue was that the property owner suspected there were too many people living in a manufactured home.
  - **Dicks:** Under the Virginia Residential Landlord Tenant Act (VRLTA) , the lot owner would have the same rights as a landlord in any other circumstance to determine compliance with the landlord’s reasonable occupancy schedules. In most tenant selection documents and lease documents, there usually is provision naming a maximum number of occupants in the dwelling unit. A manufactured home is treated as a dwelling unit under the VRLTA and the Manufactured Home Lot Rental Act. The landlord would have a right to enforce that occupancy schedule. If the landlord heard about or witnessed the overcrowding, the landlord could send a notice asking the tenant to return to compliance with the lease, otherwise the lot lease will be terminated. The landlord has some rights, but cannot unilaterally enter a home without notice using the VRLTA.
- **Ralston King, *Manufactured Housing Communities of Virginia*:** I represent manufactured housing park owner and managers; and we are eager continue to work on this issue.
- **Marshall:** How many parks are there and what percentage of them do you represent?
  - **King:** There are fifty various parks around Virginia of a wide variety of sizes.
- **Marra:** Those of us at the Virginia Poverty Law Center are very interested in this issue, and would like to be part of the discussion.

## V. Public Comment

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

## VI. Adjourn

- Upon hearing no request to comment, **Delegate Marshall** adjourned the meeting at 1:30 PM.

# COMMONWEALTH OF VIRGINIA

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



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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### **Affordable Housing, Real Estate Law, & Mortgages Work Group December 9, 2014, 10 AM House Room C, GAB**

#### I. Call to Order

✚ Delegate Danny Marshall, Chair

#### II. Retaliation by Landlord/Virginia Residential Landlord and Tenant Act (HB 820, A. Lopez, 2014) (\* bill draft)

- ✚ Mr. Brian Gordon, *Apartment and Office Building Association of Metropolitan Washington (AOBA)*
- ✚ Ms. Christie Marra, *Virginia Poverty Law Center*

#### III. Inspection by Landlord of Manufactured Homes (G. Barker, 2014) (\* bill draft)

✚ Senator George Barker

#### IV. National Register of Historic Places (HB 1198, S. Surovell, 2014)

✚ Delegate Scott Surovell

#### V. Asbestos, Lead and Home Inspectors (SB 299, A. Ebbin, 2014)

#### VI. Expedited Evictions/Virginia Residential Landlord and Tenant (SB 354, J. Edwards, 2014)

#### VII. Public comment/Adjournment

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

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

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Affordable Housing, Real Estate Law, and Mortgages December 9, 2014, 10:00 AM House Room C, General Assembly Building**

#### **I. Call to Order**

- **Delegate Danny Marshall, Chair:** called the meeting to order at 10:00 a.m. and welcomed everyone to the workgroup He asked that roll be called to determine if a quorum was present. There was not a quorum present; Delegate Marshall said that as the Workgroup is to vote to give recommendations to the full commission tomorrow; the votes will be postponed in the hope other legislators will arrive later in the meeting.

**Work Group members in attendance:** Delegate Daniel Marshall, *Chair*; Senator George Barker; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Paul Brennan, *Virginia Housing Development Authority*; Tyler Craddock, *Manufactured & Modular Housing Association*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Retaliatory Eviction (HB 820, A. Lopez 2014)**

- **Christy Marra, Virginia Poverty Law Center:** Currently, there is a statute that Virginia has that prevents a tenant from claiming he was wrongfully evicted if he complains of a building code violation or files a fair housing claim. The bill draft proposed takes word "primary" out of current law; presently the court has to find that the "primary" reason the landlord evicted the tenant was to retaliate against the landlord.
  - The draft in discussion takes the entire section and adds it to the Virginia Landlord Tenant Act as well as the Residential Landlord Tenant Act; so it is immaterial how many homes or units a landlord rents.
  - All stakeholders have agreed; Virginia Association of Realtors, and the two apartment associations and the Poverty Law Center and Legal Aide Attorneys.

- **Delegate Marshall:** There is still no quorum still, cannot make a definitive recommendation.

### **III. Manufactured Homes / Landlord Access /Senator George Barker:**

- **Senator Barker:** I worked with a group of stakeholders to resolve a conflict that was brought to my attention regarding manufactured housing. The issue is about manufactured homes and the parks where they are located, when can a landlord of the park enter into a unit an individual owns. It is a balance of property rights of the park owner versus property rights of tenant. There is nothing currently in the Code of Virginia that addresses when the park owner is entitled to go into a unit in park.
  - There is not complete consensus at this point among the interested parties.
  - The proposed legislation allows for an annual inspection in compliance with a rental agreement. The logic behind this is that the people living in unit have been approved to live there and others have not. Also, a case can be made in terms of fairness when there is a water bill that is apportioned according to how many people live in each manufactured home within the park. Emergency access would also be allowed by the landlord.
  - Twenty-four hour notice is required by the legislation for the park owner to inspect the manufactured home. The legal aid attorneys are not happy with this provision; instead they want only an allowance for emergency access.
  - If the park owner preforms an inspection outside of the annual inspection, a report should be prepared and filed somewhere, preferably in Richmond, but it has not been determined where it should be filed.
  - I wrote up this draft and Elizabeth tweaked it so it reads as you see it now.
  - I agree if this goes forward that I will continue to modify it to make all parties happy as possible; I believe there should be a standard in the Code of Virginia.
- **Delegate Marshall:** My understanding is that if my car is sitting outside in a lot that an owner owns, and it is financed by bank--can the bank check and see how many people I am driving around in my car? Is this not analogous to the manufactured home scenario?

- **Senator Barker:** The situation is already in some rental agreements now and I am not allocating unlimited access but, there are some financial implications, (the previously discussed water) where there are costs based on how many people are living in each manufactured home.
- **Delegate Marshall:** Should this proposed bill be limited to Planning District 8?
- **Senator Barker:** This is a Prince William issue, not actually in my district; it also affects Delegate David Bulova in Fairfax and Fairfax City--I agreed to find a solution based on being a member of the Virginia Housing Commission.
  - If indeed this is the only place where it is an issue, I am willing to limit it to District 8.

#### **IV. Schools' designated as a Historic Landmark; National Register of Historic Places (HB 1198, S. Surovell, 2014)**

- **Meghan Howard** (speaking on behalf of Delegate Scott Surovell):  
Would like the endorsement of the Virginia Housing Commission on a bill to establish the creation of an inventory of school buildings over 50 years old.
  - The genesis of the bill is that there was a school building in Delegate Surovell's district that turned out to be the first African- American school in the area, and it had a historic significance; changes were made to the structure before this fact was noted.
  - There needs to be an evaluation of the school buildings in a district and then publication and public comment made to the school board before changes are made or the school is demolished.
  - In order to have this take place the Department of Historic Resources needs to hire an additional full time staff person in addition to a consultant.
  - There are approximately 480 schools that are over 50 years old in the Commonwealth and it will take five years to inventory all the schools.
- **Elizabeth Tune**, Department of Historic Resources: I oversee rehabilitation tax credits and the school locations generally follow population centers; Richmond, Roanoke, and Tidewater.
- **Eric Johnson**, VACO:  
What is the fiscal impact on school boards?



- **Elizabeth Tune:** It will cost \$102,000 to hire additional employee and a consultant on a yearly basis and will cost \$3,000 per school that is accessed to determine eligibility.
- **Tyler Craddock:** How many in rural counties when in the 1960s and 1970s the last schools were built?
- **Delegate Marshall:** Once a school is placed on the list what is the fiscal impact to locality? Perhaps the newest school is 50 years old in my district and two schools were recently renovated; one just turned into a condominium and one into an office building.

Would the local school board have to have approved this being done?

- This bill was assigned to now Senator Dance's workgroup and was not heard and studied during the interim it is recommended that it is taken over to the 2015 interim by the Commission. Even without a quorum this can be done with the agreement of all parties. Agreed.

**V. Asbestos, Lead (SB 299, A. Ebbin and HB P. Farrell, 2014)(please see letter from Senator Adam Ebbin, attached)**

- Delegate Marshall assigned Delegate Chris Peace as chair of a sub work group where all stakeholders were invited to participate.
- Mainly asbestos in regard to non-regulated day labors and building code inspectors was discussed.
- There was a solution regarding language to be sent to DHCD about asbestos recognition training as part of Building Code Training Academy; it was agreed by the full Commission at the meeting on October 29 that this should be done.
- Also, some issues involving signage only available in English also had a solution; the Commission will send a letter to different agencies (DPOR, DEQ) requesting signage regarding asbestos be in Spanish.
- **Senator Barker:** We guessed as to problem and were and were evidently not correct we didn't accurately reflect what the legislators wanted us to address; neither were present at the meeting, however. I believe we should discuss this issue again in 2015.

## **VI. Expedited Evictions (SB 354 J. Edwards, 2014)**

- This is primarily a Roanoke city issue. Commercial landlords in downtown Roanoke wanted to know what to do to evict bad commercial tenants. All that was ultimately needed was clarification of existing law that already allows a commercial landlord to change the locks and evict. Staff advised that no action is needed on the part of the Virginia Housing Commission and it is advisable not to move forward as there is adequate law already in place.

## **VII. Public Comment**

- **Delegate Marshall** asked for any public comment. Christie Marra opined that the Poverty Law Center has problems with and concerns that the proposed manufactured home legislation allows for both property and privacy right to be infringed upon; therefore, it will not be supported by her organization.

## **VIII. Adjourn**

- **Delegate Marshall** adjourned the meeting at 11:15 a.m. with a reminder that the full Commission will meet tomorrow at 10:00 a.m.

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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### Virginia Housing Commission Asbestos Sub-Work Group

**July 7, 2014, 10:00 AM**  
**6th Floor Speaker's Conference Room**

- I. Welcome and Call to Order
  - Delegate Christopher Peace, *Chair*
- II. Forum for discussion and solutions for asbestos regulation
- III. Adjourn

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
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## VIRGINIA HOUSING COMMISSION

### Summary

#### Asbestos Sub Workgroup

July 7, 2014

10:00 AM, Speaker's Conference Room

The following members were present:

Delegate Chris Peace, Sub Workgroup Chair

Senator George Barker, Affordable Housing, Real Estate Law, and Mortgages Workgroup member

Ron Graham, *Department of Labor and Industry*; Erik Johnson, *VACo*; Katie Payne, *AGC, Williams Mullen*; John Catlett, *Code Administration, City of Alexandria*; Steve Calhoun, *Department of Housing and Community Development*; Trisha Henshaw, *Department of Professional and Occupational Regulation*; Renee Pulliam, *Virginia Apartment Management Association*; Chip Dicks, *Virginia Association of Realtors*; Elizabeth Palen, *Virginia Housing Commission*

### Objective:

This meeting affords the opportunity to address Delegate Peter Farrell's legislation (HB 179, Farrell, 2014) with past legislation as a starting point for discussion.

We will not necessarily go forward with the content in this bill; this sub workgroup meeting is a solutions oriented meeting to make recommendations to the Affordable Housing, Real Estate Law, and Mortgages Workgroup and ultimately the full Commission concerning asbestos-related issues.

### Sub Workgroup Recommendations:

After full discussion (see below), the following recommendations were agreed to:

- (1) Virginia Department of Labor and Industry will explore ways to make notice (to workers and others who may be on the job site) more conspicuous and more user friendly.
  - (2) A letter will be sent to DHCD asking that the Virginia Building Code Academy include a training module for building code officials that includes awareness and review of asbestos as part of training for building inspections.
  - (3) Trisha Henshaw agreed to ask the Virginia Board for Asbestos, Lead, and Home Inspectors (Asbestos Board) to promulgate regulations regarding changes in name only of the companies of rogue contractors who have been sanctioned regarding asbestos issues and returned to business.
- Overall the consensus was that most issues lie within the purview of the general contractor.

### Discussion:

Delegate Chris Peace: I know this from work done on my own home that asbestos workers have been through lots of training.

A question was asked of Trisha Henshaw of DPOR: How many complaints have been made and what is the nature of the complaints concerning asbestos?

Answer: During the time period July 2009 to June 2013, there were 16 complaints: of those, 10 are closed 10 closed- because there was no jurisdiction; three are open and the nature of the complaints is not available to the public; and three resulted in disciplinary action by the Asbestos Board, one involving an asbestos contractor.

Chris Peace: What is the law now?

Answer:

- (1) Workers, supervisors all need training.
- (2) Asbestos Board licenses asbestos supervisors.
- (3) DPOR covers asbestos contracts.
- (4) Asbestos Board deals with only licensed employee's overview of job safety relating to OSHA; meaning state OSHA.
- (5) There are training requirements from the EPA.
- (6) Work place safety is appropriate.

Chris Peace: What is the issue? Administrative?

Answer:

There is a poster that informs the worker of rights under OSHA—state OSHA program.

John Catlett: There have been substantial inconsistencies in Alexandria where EMS workers and building inspectors have gone on site and not known there was disturbed asbestos. Also, asbestos notification needs to be in English and in Spanish.

Chip Dicks: Lowest common denominator is a factor: contractors hire untrained day laborers to perform this work. Also, the job site itself and those coming on to the site may not be trained in avoiding asbestos. There may be some value to have more signage.

DPOR staffs any asbestos class drafted from what EPA requires—and conducts unannounced training.

If employer is complying with the law they have a working relationship with DPOR and if not, it would be a question of a fraudulent license.

John Catlett: In my district, EMS rescue workers and people who were residents occupied two large apartment buildings while they were being renovated—Federal OSHA got involved.

We should be addressing those who are not asbestos workers—also Spanish is appropriate—most workers on the construction sites speak Spanish—and the cleaning crews speak Spanish.

Senator George Barker: Two things stood out from Senator Ebbin's bill (same as HB 179, Farrell)

- (1) Some on job site didn't know there was asbestos present.
- (2) They didn't remember what to do if there was a problem—and had no avenue to complain—and workers were fearful if they did so, they would lose their jobs.

No written materials seem to be available.

Chris Peace: There should probably be a standard manual on each job site.

John Catlett: Contractors don't have to show reports to local building inspectors; consequently, the building inspectors don't know there is asbestos on the job site. \*Major concern other

workers on job site are not aware—need general posting on the job site that asbestos has been interrupted.

Ron Graham: OSHA says that on a multi-employer site there should be signs posted.

Is the general contractor required to notify other trades?

Answer: Generally the asbestos contractor is there by himself—complaints are not from asbestos workers but those who are not trained asbestos workers.

Chris Peace: The bill as introduced does not appear to do what it attempts to do. From this discussion it appears the problem is from day laborers or others on the job site.

John Catlett: Yes, asbestos is sometimes found where it is unexpected—inspectors go in without proper protection.

Chris Peace: Is it wise for building inspectors to take asbestos training? How many hours are needed?

Discussion ensued.

Need to increase training but maybe not to 36 hours of training? Concerned about liability. Building inspectors need 16 hours of training every two years—a core module at the Building Code Training Academy is a perfect place to teach asbestos awareness—should be one or two hours of training.

This solution may be better than passing a bill.

Steve Calhoun: DHCD can amend the Building Code regulation dealing with training on this issue; it is done all the time.

Maybe a one-hour awareness class on what to watch for on a site regarding asbestos.

Every three years the Building Code is updated—if a training module is to be developed it could be then.

\*VHC will send a letter to DHCD regarding code academy modules and the awareness and review of asbestos safety precautions.

### **Discussion of size of font of poster to be displayed on a job site.**

Chris Peace: are the poster and materials published in Spanish?

George Barker: Looking at (HB 179) the new language under clause (iii) of § 54.1-515.1—not just posting but handed something—should there be something handed to them instead of just posting?

Barbara Favola letter: Many workers have English as a second language and they don't know how and to whom to report violations.

Is there any signage up to say asbestos has been interrupted?

Renee Pulliam: If we already have OSHA—why add more administrative burden? The issue I have is if you are audited and Joe worker's paper is not there and that doesn't cause an unsafe situation, then is the requirement an unnecessary burden—very redundant. Many languages are spoken throughout the state; I also object to English and Spanish being on the signage.

\*VDLAI can explore ways to make notice more conspicuous and more user friendly.

**Asbestos contractors who change the name of business when previously guilty of a violation.**

Chris Peace: Penalties don't get contractors who change their names.

Trisha Henshaw: The Board had looked at what regulations will be necessary and DPOR has ability to check. For the violation of all requirements Dolly, OSHA and the Board has the ability to take action, but the workers and the supervisor are licensed, not the contractor.

Trisha Henshaw: My Board looks to § 54.1-500—it has no jurisdiction over unlicensed people.

George Barker: Does the new language add anything to what the Board can now do?

Regarding penalties, Asbestos Board can take action if a contractor hires an unlicensed person—to go after a contractor would be a Board for Contractors violation.

Trisha Henshaw: Issue has to have it come after Board for Contractors—currently we don't have people connected to other people under our purview to license

The consensus of the group was that asbestos should be treated as lead abatement is now.

Chris Peace asked whether the Asbestos Board can be asked to promulgate regulations based on these factors, like those on line 37 of HB 179 or will the Board promulgate these regulations without a bill?

\*Trisha Henshaw will take this suggestion to her Board and report back to the workgroup.