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VIRGINIA HOUSING COMMISSION

AGENDA

Affordability, Real Estate Law, and Mortgages Work Group/Neighborhood Transitions and Residential Land Use (Joint Workgroup Meeting)
House Room C, General Assembly Building
September 6, 2011, 10:00 A.M.

Members present: Delegate John Cosgrove, Delegate Rosalyn Dance, Delegate Daniel Marshall, Senator Mary Margaret Whipple, Delegate David Bulova, Mark Flynn, T.K. Somanath, Judson McKellar, Kelly Horne, Robert Bradshaw, Brian Gordon, Connie Chamberlin, Alexander Macaulay, Chip Dicks, Kelly Harris-Braxton, R. Schaefer Oglesby, John Jordon, Tyler Craddock, Barry Merchant, Michael Toalson, Bill Ernst, and Ted McCormack

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate Dance** called the meeting to order at 10:07 a.m. and asked members of the work group to introduce themselves.

II. Update on Manufactured Home Titling

- **Tyler Craddock**; Executive Director, Virginia Manufactured and Modular Housing Association (VMMHA)
    - VMMHA has been working with major stakeholders, including the Department of Motor Vehicles (DMV) on the issues surrounding manufactured home titling. Marc Lifset, of McGlinchey Stafford is here on behalf of Wells Fargo, and he will explain these issues.
- **Marc Lifset** introduced himself, and began his presentation by describing problems with the current system of titling manufactured homes.
    - First, unmarketable titles on existing manufactured homes make it impossible for the current owner to refinance at a lower interest rate, and for a new buyer to obtain financing to purchase the home. The title is unmarketable if the process of converting a manufactured home affixed to a permanent foundation to real estate was not properly followed initially. Lenders require title insurance on the home before providing financing, as well as an ALTA 7.1 endorsement, which ensures that the title is marketable. This poses a problem for sellers and buyers of used

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SENATOR MARY MARGARET WHIPPLE
MARK K. FLYNN
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manufactured homes, as well as current owners seeking to refinance. By providing a clear and coherent procedure for titling manufactured homes, those homes will not only hold their value, but also increase in value over time.

  - The second major issue with the current system of titling affects manufactured home owners seeking to upgrade their homes. Owners with equity in their manufactured home often trade in their current home for a larger or more energy efficient home. Currently, there is no process in Virginia for re-titling a manufactured home that has been severed from real estate.
  - A third feature of the proposed legislation is the ability to surrender the manufacturer's certificate of origin (MCO) at the first retail sale rather than using the MCO to apply for a title and then surrendering it, as is the current procedure. Additionally, the proposal provides for official public records with the DMV as well as the local land records to show that a manufactured home affixed to land has been converted to real estate. Including this in the local land records ensures the marketability of a manufactured home title.

- **Mark Flynn** inquired whether the legislation provided for a dual titling process.
  - **Marc Lifset** responded that it did not, and explained the recording process under the proposal. At closing, the buyer will receive a deed in the property and sign a deed of trust for the lender, and then the closing agent will prepare a document known as an affidavit of affixation, which states the homeowner's intent for the home to be treated as real estate. The affidavit of affixation is recorded in the land records along with the deed and the deed of trust. A certified copy of the affidavit is then delivered to the DMV with either the title or the MCO. To obtain the ALTA 7.1 manufactured home endorsement to a title policy, the title company is ensuring that there are no personal property liens on the home that would impair the title. In order to comfortably do this, the title company would need to look in both the personal and real property records.
- **Connie Chamberlin**, from Housing Opportunities Made Equal (HOME), asked Mr. Lifset about the bankruptcy implications of the proposal.
  - **Marc Lifset** replied that the conversion procedure is not mandatory, and that homeowners will be able to choose whether to convert their manufactured homes to real estate.
- **Connie Chamberlin** inquired whether a homeowner would understand the implications of converting his home to real estate.
  - **Marc Lifset** acknowledged that homeowners would not understand this option without some education on the matter. He added that there are states that include in the procedure a disclosure regarding rights and obligations for homeowners when deciding whether to do chattel or real estate financing. Although a disclosure is not included in this proposal, it could be added to the draft.

- **Mark Flynn** mentioned that if the homes are converted to real estate rather than titling the home as personal property, the debtor benefits from the Homestead exemption.
- **Delegate Marshall** asked Mr. Lifset to further explain the option of the homeowner to convert the property to real estate. Until this point the work group was under the impression that the legislation would be mandatory and would apply to the titling process of all manufactured homes.
    - **Marc Lifset** answered that in order for the home to be real estate, it needs to be placed on a foundation and installed according to law; the law is modeled after the HUD code currently in place in Virginia. An owner buying a home can do one of two things, 1) can get a title and leave the home titled as personal property or2) treated as real property and then the title y would go through the surrender procedure.
- **Delegate Marshall** asked what the proposed legislation is to accomplish if an option is offered that already is currently in the Code of Virginia; he mentioned that he titles his car, would a person need to title as realty in order to receive financing?
    - **Marc Lifset** said that option exists in current law, nothing that says a person needs to surrender the title, just trying to improve the process
- **Delegate Marshall** noted that if then when the consumer was buying he would probably be forced into taking the realty option in order to secure financing.
    - **Marc Lifset** said there are lenders who finance manufactured homes with out title surrender, important to them that there be an option, would not say consumer forced to have their homes converted to real estate; but those loans are purchased by Fannie and Freddie and this gives the borrower access to that capital and those rates.
- **Delegate Marshall** asked if he so chooses this option would he get the lower interest rate; and the response was yes.
    - **John Ricks**, an attorney for Manufactured Home Association, said that he believes that there is some confusion in existing Virginia law. He said that if a manufactured home is put on a permanent foundation, the owner has the option now to surrender the title to DMV. If the statue says thereafter the home treated as real estate, in simplified form, the DMV takes those titles and the owner comes back a few years later asking for a new title and DMV says no you surrendered it; suggestion is to allow a reissue if they go they go back to DMV and have DMV keep a record of the transaction.
- **Delegate Dance** inquired if perhaps only a simple fix is needed for this proposed legislation instead of a more complicated bill?
    - **John Ricks** answered that yes, it seems this would address the problem.
- **Chrissy Tomlin**, a loan officer for Wells Fargo, said she is a specialist in manufactured home financing; most loans go through FHA and they require a surrender of title or the person can't get financing. It is necessary to surrender the title in order to get financing and to get lower loan rates. HUD would never have been able to sell foreclosures if there were not titled homes; isn't much of an option for titling if you want to take advantage of conventional financing.

- **Delegate Marshall** wondered as far as tax when a surrender of title takes place does the tax rate change.
    - **Kristee Kelly**, from Virginia Manufactured Housing Title, LLC., said that as the rate changes, the owner pays more taxes in the long run and the house valued at a lesser amount than it would if realty.
- **Delegate Marshall** asked what percent is left as personal property. If the personal property depreciates, does the tax decrease on the homes?
    - **Kristee Kelly** replied that most personal property exchanges are done as cash purchases and most lenders require the title to be surrendered and converted; her company gives purchasers a copy of the DMV title so they can convert it to realty. She would assume that the value does decrease; can't imagine it being beneficial to the buyer to allow the home to remain personal property.
    - **Mark Flynn** said there is an impact on tax revenues to localities, whether personalty or realty. And there is an impact on tax revenues for taxes if taxed at a personal property rate versus a real estate rate; it is complicated because homes that are attached tend to appreciate as opposed to personal property. At the last meeting the proponents said they would get some further information and he wonders if they have made any progress in that regard.
    - **John Ricks** noted that there is an annual report at DMV called FIPS; you have to ask DMV for it and go to tax section of DMV, the report tells you on an annual basis, county, and city by city, where the taxes are collected on manufactured homes. The law says the tax goes to the locality where home is cited. Although he hasn't seen that report recently, at times equaled approximately $3 million dollars in local revenues.
        - The local MLS book, shows that manufactured homes on permanent foundations are appreciating, but they don't appreciate quickly—even in a hot market at the same rate—but they are appreciating and it's not minimal. He wants localities to see there is more revenue there for them than if the homes remain personal property. The Code says homes are taxed as personal property; when the title is not surrendered on manufactured homes, they're personalty and valued like a car, and in five years there is nothing left and the locality loses out on revenues. If the home is on a permanent foundation, it will be assessed as a stick built house, but this still is not completely resolved.
- **Delegate Marshall** inquired if there was any data for homes sold and what percentage are classified as real estate and which are classified as personal property.
    - **John Ricks** replied that no, he doesn't know if that data exists; he has been trying to find that information for older manufactured homes; more homes for sales becoming real estate is his industry's sense, because manufactured homes don't move much unless they are in a home park.

- **Jerry Hackett**, with Clayton Homes, Knoxville, said his company's major initiatives are focused on finding people in homes that have built up equity and encouraging them to purchase a newer home. Now his company is able to pull homes off a piece of property to get better building standards, and if the home is attached to land they cannot do this. If the home is secured to a piece of land with a permanent foundation (and sometimes they are not because people want to stay on particular land because it is family land), but they want a new home on the same land, it then saves costs. This is a major opportunity for his company as well as providing increased taxes for the locality. Taking an older home off property and putting a bigger home that is worth more in its place will have appreciated value. The banks want to finance these homes; it is a win-win situation for everyone involved.

- **Senator Whipple** said her understanding is that his interest is in being able to sell the previous home and she wondered is there a problem achieving that now?
  - **Jerry Hackett** said that you can't obtain financing without a title; if the home is severed from the land they are not able to take that title. In the next two years there will probably be a lot of activity in this area. When they pull that used home off the land, they need to find financing for it; they get a lot of calls for older, used homes, and it is important for them to be able to re-sell.
- **Mike Toalson** urged Tyler Craddock and John Ricks to work with stakeholders and bring a draft back to the group. He expounded that he felt that manufactured housing is a very important component of the housing market and that it is critical that this somehow gets straightened out, and that financing on existing homes is a critical issue for the Commission to resolve.
- **Delegate Dance** asked for Tyler Craddock and John Ricks and the others to work together and once they have a written draft the work group will reconvene and see if there is something to move forward to the full commission.

III. Update on SB 830 Fair Housing Law (Locke 2011), and HB 1578; Fair Housing Law (Dance, 2011)

- **Delegate Dance** explained that various housing groups, including the Virginia Association of Realtors (VAR) and HOME, are still developing improvements to the bill, and it is not yet ready to be heard before the full commission.
- **Senator Whipple** asked for a brief description of the issues surrounding the bill.
  - **Mark Flynn** explained that the legislation was sent back to the Housing Commission for review after failing to pass last session. There were concerns that the broad language in the bill could be used by someone who has a complaint about a zoning action taken by a locality on any project to file a complaint in circuit court to prevent the locality from proceeding with the zoning . He suggested looking at the zoning provisions in Title 15.2 of the Code of Virginia to see if the proposed bill could be included in that title. He also suggested narrowing the language to specify what localities may or may not do in that regard to providing affordable housing.

- **Connie Chamberlin** explained that HOME believes the bill addresses a very real problem, and HOME is happy to work with any interested parties to draft acceptable language.
- There was a consensus that the bill is still being discussed among stakeholders and is not yet ready to appear before the full Housing Commission.

IV. Update on SB 1312; Repair of Derelict Buildings (McEachin, 2011)

- **Jonathan Baliles**, with Planning & Development Review of the City of Richmond, explained that the bill that was introduced by Senator McEachin (SB 1312, 2011) is almost unrecognizable, and has been amended to eliminate any issues that are politically untenable.
- **Delegate Dance** noted that Chip Dicks, representing VAR, was unable to attend the last meeting where this bill was discussed. She asked for his input on the revised bill draft.
- **Chip Dicks** explained that he worked extensively with Mark Flynn and the City of Richmond to craft a bill proposal that accomplished the City's goals without infringing on personal property rights. The original SB 1312 (McEachin, 2011) has been streamlined and structured so that it supplements existing authority localities possess to incorporate the receivership process. This proposal restricts the authority of a locality to take personal property. The structure must be declared blighted by the City, which is a determination made under existing law. Only in that circumstance can a court appoint a receiver to make the necessary repairs to the property. The proposal also includes language that subjects this process to eminent domain under Section 1 to build more protections into the legislation.
- A motion to take up this issue before the full Housing Commission at the afternoon meeting was properly moved and seconded; all were in favor and the motion carried.

V. Virginia Poverty Law Center's Proposed Landlord-Tenant Bills

- **Christie Marra**, with the Virginia Poverty Law Center (VPLC), told the Commission that VPLC had been working with the association of realtors and Apartment Owners Association to address their concerns with the proposed legislation. Ron the concerns raised at the last meeting of the Neighborhood Transitions and Residential Land Use Work Group. She noted that they had made revisions to the proposal applying a prohibition on self-help by landlords to dispossess tenants of a rental property to all residential leases.
- **Chip Dicks** explained that the purpose of the proposal is to ensure that in all residential tenancies, no landlord can physically dispossess residential tenants without going through the lawful detainer process. There is no clear position stated in the Virginia Landlord-Tenant Act (VLTA) applicable to single family houses. This proposed legislation makes clear that the prohibition on self-help is only applicable to residential single family houses, and single family units. The goal is to preserve the right of landlords in a commercial lease to physically dispossess tenants, and disallow this act with regard to residential tenancies. The proposal needs minor language adjustments, but should be completed shortly.
- **Christie Marra** explained the second proposal from VPLC addressing § 8.01-126. The intent behind the proposal is to streamline the unlawful detainer process. This

will add to the Virginia Code a requirement that when a landlord files an unlawful detainer, he must also attach the termination notice that is already required to be sent to the tenant. There are still some minor issues that need to be resolved with regard to this proposal.

- **Chip Dicks** mentioned that the concern regarding this proposal is that the general district courts have moved toward e-filing. Each notice of termination is unique to that particular landlord rather than a standard uniform court form from the court's database, and the court does not have the technology to accept those forms for the purpose of e-filing. There are also concerns regarding additional fees and sheriffs' services.
- **Christie Marra** explained the third proposal from VPLC, which requires landlords to provide tenants with a written receipt for rent payment. The proposal would require a landlord to notify a tenant that the tenant has a right to request an accounting of how his rent payment is applied every month. The purpose of this requirement is to prevent a tenant from accumulating late fees and other charges as a result of those fees are being deducted from each monthly rental payment without the tenant's realization. A consensus on this proposal has not yet been reached among stakeholders.
- **Delegate Marshall** asked Mr. Dicks if there is a Code section that handles accounting and late fees as they pertain to cable and utilities.
    - **Chip Dicks** responded that he is unfamiliar with that area of the law. VPLC is attempting to provide a notification requirement for tenants who do not understand that late fees carry over into each month, and subsequently do not realize they are accruing these fees. From a policy standpoint, it makes more sense to require landlords to notify tenants that they can request a copy of their rental payment records rather than burdening landlords with a requirement to provide this record before any such request has been made.
- **Senator Whipple** inquired whether the concern is with landlords providing notice of the rent payment record or simply providing a receipt. She pointed out that issuing a receipt for rent payment is standard practice for landlords.
    - **Chip Dicks** explained that funds are often collected by landlords electronically. Most landlords will not accept cash for rent payments because of accounting concerns and other issues. Money orders are a common way of paying rent for low-income tenants who do not have access to a bank account or any type of automatic payment. In fact, the General Assembly has adopted legislation permitting landlords to require electronic rent payments to eliminate some of the accounting issues with cash rent payments. This proposal addresses a situation where the tenant does not have access to electronic payment methods. Landlords will be discouraged from accepting money orders for rent if the bill required them to issue a detailed receipt of how the payment was applied every time. However, the tenant should still have an opportunity to review his rent payment history. Requiring the landlord to provide a tenant with a copy of the tenant's rental payment record upon request addresses both of these issues. Additionally, this proposal only applies

to leases under the Virginia Residential Landlord-Tenant Act (VRLTA), and does not apply to single family houses under the VLTA. He indicated that there is more work to be done to the language of this proposal to ensure a consistent standard for both multi family and single family tenants.

    - **Christie Marra** mentioned that while accepting only electronic rent payments and issuing a receipt is fairly standard practice, there are landlords who do accept cash and do not issue receipts.

- **Delegate Dance** acknowledged that all three proposals need additional work before being presented to the full Commission.
    - **Christie Marra** agreed that additional revisions are necessary, and informed the work group that a consensus on the language has almost been reached among all stakeholders on the proposal addressing self-help eviction.
- **Delegate Dance** requested that Ms. Marra work with stakeholders on the proposals and present the updated drafts to the full Commission at the November meeting.

VI. Public Comment

- There was no public comment.

VII. Adjourn

- The meeting was adjourned at 11:20 p.m.