

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Meeting Summary

Neighborhood Transitions and Residential Land Use Work Group House Room D, General Assembly Building August 16, 2011, 10:00 A.M.

Members present: Delegate Rosalyn Dance, Delegate Daniel Marshall, Delegate David Bulova, T.K. Somanath, Mark Flynn, Barry Merchant, Brian Gordon, Michael Toalson, Bill Ernst, Ted McCormack, Tyler Craddock, Chris Freund, and Connie Chamberlin

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- **Delegate Rosalyn Dance, Chair**
 - The meeting was called to order at 10:11 a.m.

II. Update on HB 2045; Blighted Property (Ebbin, 2011)

- **Delegate Adam Ebbin**
- **John Catlett**; Department of Code Administration, City of Alexandria
 - The City of Alexandria has been working with all interested parties to reach a solution to the problem they have with incomplete and hazardous construction and rehabilitation projects. They have been working on the proposed legislation to craft a bill that encompasses a clear and present danger standard as well as the public health, safety and welfare elements that are already part of the draft. They have partnered with DHCD and will meet with them again to look at how to establish a tie with the existing Virginia Maintenance Code as another means to solve this issue.
- **Delegate Dance** asked Mr. Catlett to return to the September Neighborhood Transitions meeting to bring a more complete draft for the workgroup to discuss.

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

- **Jonathan Baliles**; Planning & Development Review, City of Richmond
 - This bill contemplates a process known as receivership, which allows the city to appoint a receiver to make necessary repairs to a derelict building. One of the major concerns with the original bill and the Receivership process was the expansion of the government's taking power. The City of

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

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

MARK K. FLYNN
T.K. SOMANATH
MELANIE S. THOMPSON

Richmond is currently developing modifications to the bill that do not expand taking power, but use existing taking power to acquire dilapidated properties. Existing authority for a locality to acquire derelict buildings include tax sales and the Spot Blight Abatement process. Under the revised bill, Receivership would allow those localities to appoint a receiver to repair properties that have already been taken using Spot Blight Abatement or tax sale proceedings. Receivership is intended to be used as a tool to encourage owners to renovate houses that are literally falling apart.

- **Delegate Marshall** asked whether this bill would apply statewide or if each locality would have to adopt the receivership process.
 - **Jonathan Baliles** responded that localities will have to adopt the receivership process since there are some localities that are relatively unaffected by the problem of derelict buildings.
- **Delegate Marshall** asked Mr. Baliles to explain the taking power the receivership process would rely on in greater detail.
 - **Jonathan Baliles** explained that the modified bill does not expand local governments' taking power, rather receivership relies on existing authority to allow a locality to repair derelict buildings. Localities currently possess the authority to take derelict buildings into their ownership using Spot Blight Abatement, for severely dilapidated buildings that meet the requirements specified in the Virginia Code, and through tax sales, for properties for which taxes have not been paid over a significant period of time. For example, if an owner is \$30,000 behind in taxes, and the property is seized through a tax sale, then a lien would be put on the property to make the necessary repairs. If the repairs cost \$30,000, now the owner must either pay off the \$60,000 in liens to retain ownership of the property or sell the property to the city or private party. Without receivership, the property would be auctioned off at a tax sale in its existing condition.
- **T.K. Somanath** passed around a picture of a dilapidated house located in the city of Richmond. The house pictured has been in its horrific condition for almost 20 years. The city of Richmond took the owner to court and the owner has not complied in a permanent fashion. Row homes adjoin the house, and it is critical that there be a way to enforce the current building codes and there must also be tools to improve blighted property. The city needs to have necessary tools to help neighborhoods and homeowners surrounding vacant property. The Better Housing Coalition (BHC) is in the business of community revitalization.
- **Lane Pearson**, with BHC clarified that receivership is limited in scope, and neutral in its affect on ownership. The process does not affect ownership rights, rather it affects the condition of the building. Once the property has already been seized by the city using existing authority, then receivership allows the city to appoint a receiver to repair the property.
- **T.K. Somanath** asked the work group to look at another issue regarding rehabilitation of foreclosed houses.
 - **Jonathan Baliles** mentioned that foreclosed properties is relatively good condition are not the target of this bill. The bill focuses on rehabilitating houses that are on the verge of collapse.

- **Delegate Marshall** noted that 10% of houses in the city of Danville are currently vacant, and blighted property is a big concern. The person living next door to a derelict building who is maintaining his home is severely disadvantaged by the presence of blight, and in some instances these dilapidated homes eventually become crack houses. He asked Mr. Baliles whether Spot Blight Abatement and tax sales are sufficient tools to protect owners who live next to blighted property.
 - **Jonathan Baliles** responded that Spot Blight Abatement and tax sales are both lengthy processes, filled with court appearances and delays.
 - **Mark Flynn**, with Virginia Municipal League, worked on the bill as well, and added that receivership actually benefits the original owner as well as the surrounding neighborhood. The city of Danville would use the existing tools of Spot Blight Abatement to take ownership of the property, and receivership would be used to bring the property to a livable condition, as long as it is feasible to do so. Without receivership, if the city uses Spot Blight Abatement to take the property and sells it in its existing condition, the original owner most likely receives nothing. If the city uses receivership, then the house can be repaired and subsequently sold, with net proceeds to be given to the original owner. This will reduce the time that the city is forced to take the original owner's property, since Spot Blight Abatement and tax sale proceedings are such lengthy processes. Additionally, during every step of the receivership process the owner can reclaim ownership of the property if he can pay off the liens and repair the building.
- **Delegate Marshall** mentioned that the problem in Danville is that the derelict houses have more than one lien on the property. If the city were to purchase a house to have it destroyed, and discovers there are \$40,000 in liens on a house worth \$10,000, the city will lose \$30,000 just by taking ownership. Then if the house is destroyed it will cost another \$10,000, and the city ends up spending \$50,000 on a vacant lot that might sell for \$500. It sounds as though the receivership process might at least raise enough money at a subsequent sale to pay off the liens on the property.
- **Delegate Dance** asked Mr. Baliles to finish drafting the new version of SB 1312 and present it at the September 6th Neighborhood Transitions and Residential Land Use Work Group meeting.

IV. Virginia Poverty Law Center's Landlord-Tenant 2012 Legislative Proposals

- **Beth Jamerson**, with Legislative Services, gave a brief overview of *Maciel v. Commonwealth*, the case that was the impetus for the Virginia Poverty Law Center's proposals.
 - The facts of *Maciel v. Commonwealth* involved a student who was locked out of his on-campus university-owned apartment after refusing to leave when his lease expired. The court held that the university did not need to first obtain a writ of possession from the court, as provided for under §55-225 of the Code of Virginia, before using self-help to evict Maciel because he signed a lease agreeing to vacate the premises immediately upon lease expiration. The statutory protection requiring a landlord to obtain a writ of

possession, was deemed waived by Maciel since he signed a lease with contrary terms. Although this right is non-waivable under the Virginia Residential Landlord and Tenant Act (VRLTA), the VRLTA did not apply to Maciel because certain types of rental properties (including student housing) are exempted from the VRLTA under §55-248.5 of the Virginia Code. If a tenant signs a lease with provisions that differ from §55-225, and the VRLTA does not apply, then the terms in the lease prevail over the statutory provisions, and any rights found in §55-225 that are contrary to those provided by the lease are deemed waived by the tenant.

- The *Maciel* court noted that the General Assembly has “taken no action to include in [§55-225] a ‘no waiver’ provision similar to the provision that is already found in the VRLTA.” Accordingly, any prohibition on waiver of rights found in §55-225 must be done legislatively.
- **Christie Marra**, with the Virginia Poverty Law Center (VPLC), explained three legislative proposals from the VPLC for the 2012 Regular Session.
 - The first proposal seeks to apply Virginia’s prohibition on self-help evictions equally to all residential tenancies, regardless of whether they are covered by the VRLTA. VPLC is concerned because most leases include a provision requiring the tenant to vacate the premises or surrender possession, and if the VRLTA does not apply, the landlord can evict the tenant through self-help without a court order. The biggest concern is for tenants renting single-family homes where the landlord does not rent the requisite number of properties under §55-248.5.
 - VPLC proposes adding language to §55-225 to prohibit lease terms that waive any of the rights provided under that section.
 - The second proposal requires landlords to issue receipts for rent payments to tenants that specify how the payments are credited to help tenants track and budget their funds. This proposal will provide tenants with proof of payment as well as alert them to any remaining balance owed on their rent. If a tenant is unaware that he is being charged a late fee, for instance, part of the rent payment could be applied to the late fee, and the full rent remains unpaid. In that situation, the tenant would then owe the remaining rent plus an additional late fee, and the amount overdue would continue to accumulate, without the tenant every realizing this was happening. Providing notice to the tenant of how each payment is credited would benefit everyone involved.
 - VPLC proposes requiring landlords to provide tenants with a written receipt issued on a standards form within five business days detailing the date and amount of payment, and how the payment has been allocated.
 - The third proposal addresses the unlawful detainer summons. The Virginia Code does not require a landlord to attach the lease termination notice to the summons for unlawful detainer. Whether the termination notice is attached varies by jurisdiction. Attaching the termination notice and filing this notice with the court promotes uniformity and judicial efficiency, especially in cases where one or both parties are unrepresented.

- VPLC proposes requiring that the lease termination notice be attached to the summons for unlawful detainer where a landlord is bringing an unlawful detainer action against a tenant.
- **Delegate Dance** explained that two members of the work group were unable to attend the meeting, and she was uncomfortable making any recommendations with regard to VPLC's proposals without their input. There was a consensus among the work group members to move this issue to the September 6th Neighborhood Transitions meeting. Delegate Dance asked for comments from those members present.
- **Brian Gordon**, with the Apartment and Office Building Association (AOBA), noted that although AOBA's members are not opposed to resolving discrepancies in the law, they are concerned that the change recommended by VPLC's first proposal could apply to commercial, industrial, and retail properties. Commercial leases often contain waivers that need to be preserved. He suggested limiting the scope of the proposal to residential rental properties only.
 - **Christie Marra** indicated that VPLC has no objection to limiting the scope of the proposed bill to residential leases.
- **Brian Gordon** mentioned that with regard to the second proposal, issuing receipts for rent payments to tenants is considered routine, and AOBA is not opposed to requiring this practice legislatively. However, the wording of the proposal is restrictive and suggests the receipt be issued on a form provided by the Virginia Supreme Court. This requirement, as well as the five-day timeframe, could prove to be difficult administratively for many of AOBA's members.
 - **Christie Marra** emphasized that the key to the proposal is that a written receipt be provided that details how the payment was credited. If increasing the timeframe and type of receipt issued allows for easier compliance, then VPLC can work together with members of this work group to find more agreeable terms.
- **Delegate Dance** asked Ms. Marra to modify the proposal to reflect Mr. Gordon's concerns by the September 6th meeting.
- **Tyler Craddock**, with the Virginia Manufactured and Modular Housing Association (VMMHA), mentioned that in 1994 approximately 35% of rental properties in the Commonwealth were covered by the Virginia Landlord Tenant Act (VLTA), but not the VRLTA. He asked Ms. Marra what percentage of residential rental properties fall under the VLTA but not the VRLTA currently, and what types of properties are covered by the VLTA rather than the VRLTA.
 - **Christie Marra** responded that VPLC does not have data regarding how many properties are covered by the VLTA and not the VRLTA. The properties that fall under that category are typically located in rural areas, and this is the biggest distinguishing factor. Landlords in rural areas are more likely to rent only one or two properties, and this prevents those properties from falling under the VRLTA.
- **Delegate Bulova**, to better understand the situation with regard to student housing issues, asked Ms. Marra whether student housing is subject to the VLTA or if there is a separate body of law that governs student housing.

- **Christie Marra** explained that any rental property that does not come under the VRLTA falls under the VLTA. As far as she is aware there is no separate set of statutes that govern student housing.
- **Delegate Bulova** mentioned that VPLC is mainly concerned with single family residences that are not covered by the VRLTA, but he noted that student housing would necessarily be swept under the no-waiver provisions with the broad language found in the first proposal. He asked if there are other types of housing that they should be concerned with when including a no-waiver provision in §55-225.
 - **Christie Marra** acknowledged that VPLC is indeed mostly concerned with single family rental properties, and implied that the VPLC would redraft the language to exclude student housing and commercial leases. She conceded that there may be other types of housing situations that may need to be further investigated to determine whether they should be exempted as well.
- **Delegate Dance** encouraged Ms. Marra to work with the work group members on the concerns expressed at the meeting, and prepare a presentation for the September 6th meeting.

V. Public Comment

- There was no public comment.

VI. Adjourn

- The meeting was adjourned at 11:09 a.m.