

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### Minutes July 9, 2009 Neighborhood Transitions sub-work Group

#### Attendants

Del Rosalyn Dance

Rosalyn Dance Called to order at 1:08 pm.

We are here to make sure we have from the key players in this important piece of legislation, and hear the concerns in the beginning

We have been incorporating everybody's best ideas in hopes that we can reach a compromise

We have two documents, we will go through them paying close attention to those three overarching issues

Discussion of the two documents. One in black from Mar, one with Red from Chip Dicks

Discussion of the article (see attached) about Williamsburg

The version, in black and white only, was intended to incorporate the three changes discussed from last meeting

Talked with Karen Hartwood to help with some changes

Chip; more consistent in my version to have "enforce provisions" as opposed to "impose civil penalties" but that does not seem substantive.

Using scheduled violations of, clarifies as opposed to having "violations of state and local laws"

The scheduled violation in Para B is limited, compared to all state or local laws.

Using the language setting forth therein limits the scope

Absolutely agree with last sentence limiting to single family homes, problem isn't really in apt communities

Concerns over violations vs. convictions. Selective enforcement problems, fair housing

What is the rationale for using a charge vs. a conviction

Elizabeth Palen: the length of time, by the time the incidents go through the court it could easily be over a year

What we teach landlords and agents is to not mention the criminal offense as a trigger, raised standard of burden and can kick out the unlawful detainer

What happens when a locality goes against the landlord based upon criminal charges against the tenants but the tenants' charges don't stick?

Mark: I agree that we need to de-couple the charge and the violation

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DELEGATE JOHN A. COSGROVE  
DELEGATE ROSALYN R. DANCE  
DELEGATE ROBERT D. HULL  
DELEGATE DANIEL W. MARSHALL, III  
DELEGATE G. GLENN ODER

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

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

Chip: what if we limit the things to lease violations, and we keep this as a preponderance standard

Del Dance: What about a landlord whose lease does not include these items? Say its an old lease?

(Guy with glasses) Does the Landlord tenant act have the same quiet enjoyment policies?

Chip: no

Guy with glasses: we were talking about quiet enjoyment, but if its off the table, we seem to be taking away some of the enforceability

Chip: we may have to go into the VLTA and amend a section to include some of these things. Take it out of the criminal context and put it in the VLTA and impose a duty to the tenant and landlord regardless of the lease.

Ill stick something about that into the next generation of the draft

The next problem is whos responsible under this?

Mark has occupants, guests and tenants, I have just tenants

Lets say an occupant is a 12 year old. Do we want to go after the landlord for the acts of a tenants child? This may be farther polictically than we want to go in the fist draft.

The next issue is guest, lets say I have a guest who drinks and leaves and does something that may be criminal or a lease violation.

The end goal is to solve;l if you evict the tenant, solving the problem with the tenant also solves the problem with the tenants guests or invitees.

If you include guests or invitees, then your saying "im a landlord, and I have a tenant, and a tenants guests comes into this land without my knowledge, your going to penalize me?

Mark: so your saying in the LTA, tenants obligations include that his guest and invitees have to comply with the lease?

Dance: this should help the landlord who doesn't have the best lease, this law would umbrella him?

Dicks: look at the relevant language of the VRLTA, and the same language is A(8) of the relvant portion fo the VLTA

(AA guy) If there a defense for the tenant to say I didn't know that guy?

Chip Dicks: lease we use usually impose a strict liability for anyone on the premises.

Dance: so if we are defining the group as 4 or less units, the smaller landlord would negotiate this on his own, then they are the ones who are liable and causing the most grief and pain b/c they are less likely to have the tenant on board,

Chip: whether its in the lease or not, this will act as a back-stop provision, if the ll doesn't do what hes supposed to do, then the locality can force him to do what hes supposed to do.

Kelly: the local gov'n'ts are the ones who could enforce this, correct?

Mark: what were saying ios we invoke it when the ll has allowed the tenant to continue to violate the VLTA

Chip: so if they are violations of the VLTA, then we will force the LL to take action against the tenant or punish the landlord of rnot doing so

Kelly: Is there an amount of time for the local municipal attorney to wait and see if the landlord will do something?

Chip: yes, but the intent was to give the locality the ability to nudge the landlord. The problem is likely to be out of town landlords

Kelly: My concern is making things more tedious and adding more time, making it longer

Ted: Would there be anything that prevents a locality from saying, after the first violation?

Chip: there's nothing saying you couldn't in here

John: how does the locality know that a charge even occurred?

Mark: you would need to educate the police

Ted: in some areas, it may not just be college kids, but younger military

Mark: I understand the "shall notify" may be burdensome

(Brian) I'd like to clarify that it is the same tenant, or not?

Chip: if we added one or more tenants who committed the violation; it would be very easy to fix that, so that if I was the tenant, and I was evicted, and there was another violation by the next one, the LL wouldn't be penalized

Chip: we can go back and look at that

A. Vaughn: if the locality does not send a notice, so the LL can say there was no notice sent

Dance: well, until the localities decide to enforce it, they can't say anything

Moving onto to Para B

Chip: I'll take the conviction part out

Discussed what is included in the various code sections, 18.2- 387, 388, and 18.2-415

Chip: what I would suggest is to take the language from the VLTA that involves a criminal act and uses the preponderance of the evidence standard, and takes them out of criminal arena and makes them statutory violations of the tenant.

Chip:

Lets say I'm in an owner occupied house, and I have people over on the 4<sup>th</sup> of July, and a neighbor complains. What is the criteria that a locality determines a violation? Would it be criminal or civil?

Mark: typically, they are criminal, and the Police would go get a Decibel meter

Chip: my concern is having "local noise ordinance" as language, given the case law and what's in the code, doesn't give me a lot of comfort.

Maybe we can clarify this language, not comfortable with just any local noise ordinance; especially since the landlord didn't commit the infraction

I envision that the local noise ordinance would include a VA Beach type provision, so it's not just a neighbor complaining,

Moving onto Para C

Chip: I lessed the violation amount a little, and left mostly identical to your copy.

Dance: I think the intent was to make the penalty was so stringent that the landlord didn't want to pay it, even if they could still make some money off the lease

\$5,000 just seems so harsh to not allow a LL to continue renting,

Chip: My experience has been that when a locality goes after someone, they usually issue a lot of sums as one time, why should the first be \$500, and then the next one be a lot more?

Maybe it's best for the GA to start at \$5K and weaken it.

Dance: if we were to take this and make all the changes, and present this to the full housing commission, how would you vote?

Chip: well it includes the same operative set of facts, this would create a precedence, and create a repeat offender to get the higher fines

Mark Flynn: it seems to be, that localities interested in adopting this are only going to adopt it when they really have a problem. With the notice and such. But it absolutely is a necessary tool for a landlord who really doesn't care

Chip: this statute may be timely to help localities deal with foreclosed homes where the bank may not even know about the tenants

David Boluva: In sub (E), where we talk about a court ordering someone to remedy a violation, and every day constitutes another violation.

Can we make this clearer? There is one incident, as opposed to a zoning problem, which is continual

My next issue is with (F), where we talk about a summons,

Maybe we are making the time frame of 12 months so tight that it is too difficult to have a locality to enforce? Maybe 18 months?

Dance:

Even if we make changes, will the GA extend it? Should we start at 12, with maybe 18 later, or start at 18 now?

Mark: I have no problem with later time

Chip: most leases are 12 months, and instances where you have problems, usually you have problems real quickly. In the VRTLA, we have a one violation you get a 21-30, and then if you repeat the problem within 12 months, you get a repeat violation notice.

We may be able to do something about number of violations in the lease?

Dance: so if we use generic terms of tenancy, some could be 12, some could be longer?

Mark: upon rethinking, 12 months makes it clear that it's only the real problem properties

Dance: ok, so were back to 12 months

A. Vaughn: what happens when it's a sublet?

Chip: the new students would not be treated as trespassers, but they could be removed as a tenant; this would still apply.

If someone pays the rent then they have a duty to inquire, and if so happens to be, create a new lease.

Dance: wordsmithing will take place, and if we need one more meeting, it would be before the full housing commission

Meeting Set in early September (get date from Elizabeth Palen)

Elizabeth Palen: Do we want to bring this to the Neighborhood transitions work-group?

Dance: Yes, we need to do one more meeting late August

Once Chip and Mark finish their work, we will schedule one more meeting, then to full transition committee, then to full Housing committee.

Boluva: would it make sense to get some comments from the localities, to see if this as a practical matter they would even be adopted?

Dance: we would look to localities that have Universities in their backyard.

Mark: I can send it out to the local gov't attorneys listserve.

Meeting Adjourned 2:30