

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Meeting Summary

Virginia Housing Commission Senate Room A, General Assembly Building December 7, 2010; 10:00 A.M.

Members Present: Senator Mamie Locke, Delegate John Cosgrove, Senator John Watkins, Delegate David Bulova, Delegate Rosalyn Dance, Delegate Danny Marshall, Delegate Glenn Oder, Melanie Thompson

Staff Present: Elizabeth Palen and Jillian Malizio

I. Welcome and Call to Order

- Senator Mamie Locke, Chair

II. Proposed Legislation

▪ Chinese Drywall Database

- o **Chip Dicks, Virginia Association of Realtors**— The proposed draft of the bill deletes the registry concept. Three issues arose with the registry, no state agency felt they were the appropriate agency to monitor the registry; the accuracy of the information on the registry; and the question of how to get off the registry when you remedy the drywall situation. Our main goal is to disclose the presence of Chinese drywall to the buyer.
- o **Delegate Marshall**—*What happens if the realtor does know and does not disclose?*
- o **Chip Dicks**—There are existing provisions in the Code that provide the real estate licensee would be subject to discipline by DPOR. If there was a defect about which the buyer was not aware and the seller did not disclose, the real estate agent may be subject to liability. The buyer would have no right to rescind the contract, but they would be able to bring a civil action against the agent.
- o Recent changes to the bill deal with disclosure. The first is what happens when an owner is renting a property that has Chinese drywall. According to the VTLA, if the landlord has actual knowledge of the drywall he must disclose that information. The second involves disclosure of any sales by a party to a third party. The third, deals with assessments of the property. This section applies to current victims. The IRS has issued a ruling that anybody who has been victimized by drywall will receive a tax deduction in the amount of the loss. In

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

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

this bill, an owner with Chinese drywall can go to real estate assessor and have an official affirm the amount of the damage. The assessment will be lowered based on the assessed price of fixing the Chinese drywall damage. The owner would only have to pay real estate tax.

- o **Delegate Bulova**—*I am concerned about the line which refers to remedies and the sixty day provision. In order for a renter to exercise the right to get out of lease if the landlord didn't disclose the presence of Chinese drywall. My concern is that if the renter may not know within sixty days that the building has defective drywall and by the time they do they will be past the sixty day period.*
- o **Chip Dicks**—The thought behind that provision is that, as far as I know, all of the Chinese drywall installations have been identified. When drafting the bill, we looked at Oceana legislation which provided for a thirty day right; that was too short a period of time.
- o **Delegate Marshall**—*Do we know the total amount of Chinese drywall that was brought into the state? If you match the amount of drywall brought in, with the number of homes that have been identified as possessing Chinese drywall, are we able to account for all of the drywall?*
- o **Delegate Oder**—*That specific data has not been looked at yet. The first shipment from the supplier went to the first homes on February 16, 2006. As to whether or not it went where its supposed to go we can be positive. I don't think that anyone could claim they have Chinese drywall unless it is actually present.*
- o **Delegate Marshall**—*As homeowners take remedial action, their names should be taken off the list.*
- o **Chip Dicks**—The Consumer Protection Agency has not yet to issue a ruling on remediation. A homeowner must be able to prove that the house is cured. People are remediating the homes now, but if a protocol is issued and the remedy they did wasn't exactly according to protocol, changes will have to be made to meet the new standard. This bill tries to create a level of disclosure.
- o **Delegate Bulova**—*Are there any health impacts associated with Chinese drywall within the first sixty days? If a landlord knowingly does not disclose, why should they have an opportunity to avoid punishment?*
- o **Delegate Oder**—*If on the sixty-first day a tenant finds out about the drywall and that the landlord knew about it, the landlord will be liable civilly. But if the tenant discovers the defective drywall before the sixty day period they have the automatic right vacate the property.*
- o **Ron Clemens—Building and Code Officials Association**—The only issue our association had with the bill was where it said the building official shall confirm the presence of Chinese drywall. The way it is currently written it could be read that it is the building code officials duty to find the drywall.
- o **Delegate Marshall**—*This bill would only affect a few building code officials because this is a problem in only a few localities in Virginia.*
- o **Ron Clemens**—Yes, the Chinese drywall issue is mostly in the Tidewater area, probably 12 officials.
- o **Delegate Marshall**—*The bill is applicable statewide, but it is not effecting the whole state.*

- **Chip Dicks**—We could add language in the bill that specifically states that after the sixtieth day the tenant has a right of action against the landlord.
- **Senator Watkins**—Why can we not change the language to sixty days after discovery?
- **Chip Dicks**—The total universe has been limited to less than 400 properties. We are dealing with actual knowledge.
- A motion was made to accept, in concept, the legislation today with the addition of the building officials recommendation and language that specifies a tenants rights after sixty days. The motion was seconded and all members voted to support the bill.
- Delegate Oder will carry the legislation during session.
- **Landlord/Tenant Act**
 - **Christie Marra**—*Virginia Poverty Law Center*— The proposed bill would allow tenants to pay rent into an escrow account when there is a dispute with the landlord over compliance with the rental agreement. This provision is currently in the Virginia Residential Landlord and Tenant Act (VRLTA), this bill would take that language and include it in the Virginia Landlord and Tenant Act (VLTA).
 - **Chip Dicks**—We have worked out the language and that is exactly what the language will achieve.
 - A motion was made and seconded to support the legislation. The full commission voted to submit this legislation to the full legislature.
 - Senator Locke and Delegate Oder will sponsor the bill.
- **Mortgage Loan Originator**
 - **Delegate Marshall**—In 2008, the federal government passed the SAFE Act, which requires that mortgage loan originators (MLO) are licensed. A subcommittee of the Housing Affordability and Mortgages workgroup was created to resolve the existing issue.
 - **Judson McKellar**, *Virginia Housing Development Authority*—An issue that was identified concerns uncertainty as to whether housing counselors who assist borrowers for default need to be licensed. The language was amended to say that any individual who is certified by the Department of Housing and Urban Development (HUD) as a housing counselor and who assists the borrower by negotiating their loan terms because they are at risk of default will not have to be licensed as an MLO.
 - A motion was made and seconded to support the legislation. The full commission voted to submit this legislation to the full legislature.
 - Senator Watkins and Delegate Marshall will sponsor the legislation.
- **Delinquent Landlord**
 - **Delegate Bulova**—This bill allows a locality to hold a landlord accountable in situations where the tenant repeatedly violates local ordinances and the landlord does nothing to remedy the problem. A concern arose as to the statewide applicability of the bill. Mark Flynn of the Virginia Municipal League, drew up language that narrows the bill's application to localities that have four-year institutions or are surrounding a four-year institution. The bill would not apply to the entire locality, the local housing authority must delegate specific areas as

rehabilitation districts. Last year the bill was unsuccessful, it is our hope that narrowing the scope geographically will help it pass this year.

- o **Mark Flynn**, *Virginia Municipal League*— The legislation applies only to public colleges, not private and only in places where rehabilitation/conservations districts have been created. A locality will have to adopt an ordinance to put the bill into effect. Each time a tenant is convicted of a violation, the locality would have to send a notice to the landlord after each conviction. If the landlord starts legal proceedings to remedy the situation, the locality will be prohibited to take action against the landlord.
- o **Senator Watkins**—*Why are we limiting the bill to four-year public institutions?*
- o **Mark Flynn**—The issue came to us first from public institutions.
- o **Delegate Dance**—*In order to get support, the bill needed to be minimized to affect only the source of its origination.*
- o A motion was made and seconded to support the legislation. The full commission voted to submit this legislation to the full legislature.
- o Delegate Bulova and Delegate Dance will sponsor the bill.
- **Senator Locke**—*At the last Housing Commission meeting, we voted to support the assessors' bill and the fair housing bill. Both of these pieces of legislation still require patrons.*
 - o Senator Locke and Delegate Dance will sponsor the fair housing bill.
 - o Senator Watkins will sponsor the assessors' bill.

III. C. Theodore Koebel; Professor, Urban Affairs and Planning, Virginia Tech

- Presentation on Urban Development Areas (UDA) and Housing Affordability
- The Code of Virginia requires UDAs in each locality where population growth during a decade is greater than or equal to fifteen percent, greater than or equal to five percent, and the locality has a population of greater than or equal to 20,000 people.
- Traditional Neighborhood Development (TND) requirements “may include” mixed housing types, with affordable housing to meet the projected family income distributions of future residential growth.
- Planning efficiency ratio may be skewed. For example, if a developer is zoning for eight townhouses per acre, the actual build out will probably be less than that amount. This is the result of problems with the land and during the planning process developers tend to reduce density.
- In order to project residential demand, the population per household method can be inaccurate. The household headship rate method is the superior method.
- Married couples account for 92% of residents in single family detached housing.
- Of one unit structures, 82% are owned, not rented.
- The number of units produce exceeds household growth related demand by around 20%.
- Housing Virginia, Center for Housing Research, and the Virginia Association of Realtors partnered to create a web resource that provides numerous amount of data and detail about different areas.
- The Housing Affordability Index (HAI) shows that overall affordability is improving, but incomes are declining.

- Housing affordability has improved because of low interest rates and lower priced homes.
- Paying more than 30% of income for housing.
- The UDA-Affordability link:
 - Requires projections for the range of incomes and market segments; identify the jobs-housing connection; create a diverse housing stock for a diverse population; size UDAs for a fifteen to twenty year supply of zoned land at adequate densities; improve the nominal efficiency ratio.
- Optimization Planning
 - Improve data and projects; use GIS for land scoring; use multi-criteria optimizations algorithms.
- **Delegate Oder**—*According to your slide, it look like the trend is still downwards.*
- In major metropolitan areas the decline seems to be bottoming out.
- **Delegate Marshall**—*When you refer to affordability you mean both mortgage payments and rent?*
 - Yes
- **Delegate Marshall**—Are utility costs included in the index?
 - Each index is different. Utility costs are included in the census bureau's index. Some indices include the cost of transportation. I've included a chart showing the change in utility costs.
- **Delegate Marshall**—*We don't know what percentage of "affordable" has to do with utilities?*
- **Neal Barber**—*Housing Virginia*—on ownership side it PITI
 - For homeowners the index includes PITI—Principal, Interest, Taxes, and Insurance.
 - For rentals, the HUD figures are used which includes utilities.
- **Delegate Bulova**—*Is support available to localities to helps them operate UDAs?*
 - In my opinion outside the few communities that have significant staffing and planning, this is a significant challenge.
 - **Bill Ernst**, *Department of Housing and Community Development (DHCD)*—Localities are not using DHCD money to support UDAs. The Secretary of Transportation gave money to assist localities in UDA development. Grants ranging from \$25,000 to \$100,000. There is a recognition of need for support for local governments.
- **C. Theodore Koebel**—This is not a one shot fix. Ongoing monitoring, improvements, and planning are required.
- **Senator Watkins**—*Comments were made with regard to rental housing, the price of which is steadily increasing. Why we haven't seen more attempts at development in this area? Is it a planning issue? Or a credit issue?*
 - Credit is part of the problem. When housing prices increased many young adults moved home with their parents. There will be a stimulus in the rental market when they move out.
- **Senator Watkins**—*How much of a trend are you looking at when you make the comment about the price of rental apartments?*
- Rent indices have been fairly steady, they did not rise the way detached homes did.

IV. Election of Chair and Vice Chair

- Delegate John Cosgrove was elected by the commission to serve as it's next chair.
- Senator Mamie Locke was elected by the commission to serve as it's next vice-chair.

V. Public Comment

VI. Adjourn

- Meeting adjourned at 11:37