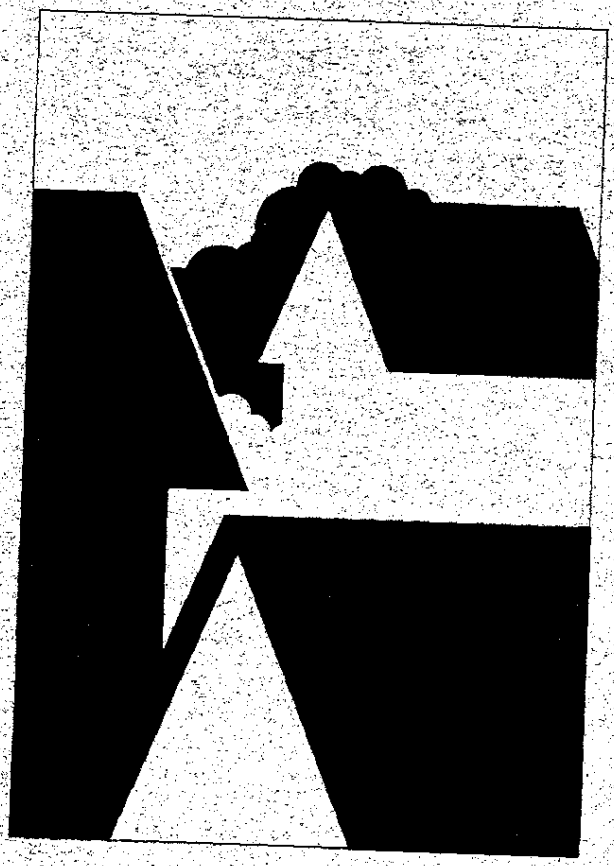
Virginia Housing Study Commission

1989 Annual Report to The Governor and The General Assembly of Virginia



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General Assembly of Virginia

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94th Legislative District

The Honorable Clive L. DuVal 2d
Virginia State Senate
32nd Legislative District

The Honorable Daniel W. Bird, Jr.
Virginia State Senate
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The Honorable Stanley C. Walker
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The Honorable John G. Dicks, III
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Introduction

The Housing Study Commission: An Overview

The Virginia Housing Study Commission was established by Act of Assembly during the 1970 Session of the Virginia General Assembly. The Commission is directed to "study the ways and means best designed to utilize existing resources and to develop facilities that will provide the Commonwealth's growing population with adequate housing." The Commission is further directed "to examine all relevant provisions" of Virginia laws to determine if such laws "are adequate to meet the present and future housing needs of all income levels" in the Commonwealth, and to recommend such changes in relevant laws as it deems appropriate.

From 1971-1982, the Commission introduced legislation designed to advance its goal of providing a safe, decent, affordable home for every Virginian. Legislation recommended by the Commission and subsequently enacted by the General Assembly during that time period includes:

- The establishment of a state office of housing, now the Division of Housing of the Virginia Department of Housing and Community Development
- The establishment of the Virginia Housing Development Authority
- The Uniform Statewide Building Code
- The Virginia Residential Landlord and Tenant Act
- The Condominium Act
- The Virginia Real Estate Cooperative Act.

After a period of dormancy from 1982-1986, the Commission was reactivated by the 1987 General Assembly. Delegate Alan A. Diamonstein (D-Newport News), Commission Chairman since 1972, was re-elected Chairman in 1987. The 1988 General Assembly subsequently accepted the Commission's recommendations, which include creating and capitalizing the $47.5 million Virginia Housing Partnership Fund and establishing a Virginia income tax check-off provision to assist persons with special housing needs. Later that year, the Commission convened the historic first Governor's Conference on Housing.

Commission recommendations to the 1989 General Assembly also were embraced by Virginia legislators. Commission recommendations approved include a $1.026 million homelessness prevention demonstration program; a five-year extension and program expansion of the Virginia Neighborhood Assistance Act; a state low-income housing development tax credit program; the establishment of the Virginia Housing Research Center; state authorization of such flexible zoning techniques as planned unit developments, mixed unit developments, and density bonuses; and exemption of nonprofit housing organizations from tangible personal property tax on materials purchased for the preservation or production of affordable housing.

1989 Work Program

Building on its 1987 and 1988 accomplishments, the Commission in 1989 focused on the following broad areas of study.

A. Preservation of Affordable Housing, including expiring contracts executed by the U.S. Department of Housing and Urban Development and developers of affordable multifamily housing; displacement related to redevelopment of multifamily housing; coverage of single family rental units under the Virginia Residential Landlord and Tenant Act; and the new federal Fair Housing law.

B. Rural Housing, particularly the need for safe and sanitary water and wastewater facilities.

C. Growth Management, including initiatives to streamline local land use regulation; manufactured housing; exclusionary land use controls; and local government land use practices that affect the cost and availability of housing.

D. Housing for Elderly and Disabled Virginians, particularly rindependent living eligibility.

E. Housing Finance, including employer-assisted housing and down payment assistance programs.

In addition, the Commission was mandated by Senate Joint Resolution 190, passed by the 1989 General Assembly, to study the feasibility of allowing localities to enact fire prevention regulations and building requirements more strict than those allowed under the Virginia Uniform Statewide Building Code. Commission recommendations related to SJR 190 and other 1989 study issues are presented in the following sections of this report.

Methodology

As in 1987 and 1988, Delegate Diamonstein involved a cross section of housing advocates in the work of the Commission. Accordingly, he appointed five Subcommittees to share with the Commission their insight and expertise on the designated study issues. To gather testimony on those issues, the Commission convened public hearings in Dublin, Richmond, Fairfax, and Newport News. The hearings were attended by hundreds of Virginia citizens.

Together with the Virginia Department of Housing and Community Development and the Virginia Housing Development Authority, the Housing Study Commission also sponsored the second Governor's Conference on Housing. The Conference, convened in Norfolk in September, was the largest housing-related gathering held in the United States. Over 600 conferees from the public and private sectors and nonprofit organizations participated in tracts on housing the homeless; growth management and affordable housing; housing the elderly and disabled; rural housing; and affordable housing finance strategies.

Following the public hearings and the Governor's Conference, the Commission, joined by its Subcommittees, the Board and key staff of the Department of Housing and Community Development, the Commission and key staff of the Virginia Housing Development Authority, and the Advisory Board and acting director of the Housing Research Center, held its annual three-day legislative work session. After reviewing testimony from public hearings, issue papers prepared by its staff and staff of the Department of Housing and Community Development, and Subcommittee recommendations, the Housing Study Commission unanimously agreed on the recommendations published in this report.

The Commission and its staff express sincere gratitude and appreciation to all who have contributed to its work—to Subcommittee members; to the Board and director of the Virginia Department of Housing and Community Development, and its Office of Policy Analysis and Research and Division of Housing; to the Commissioners and Management Committee of the Virginia Housing Development Authority, and its Division of Planning and Research; to the staff of Virginia Water Project; to those who participated in the Commission public hearings and the Governor's Conference on Housing; and to housing advocates across the Commonwealth who have actively assisted the Commission since its 1987 reactivation.

Preservation of Affordable Housing

The Virginia Housing Study Commission in 1988 identified multifamily housing redevelopment and the expiration of contracts executed by developers of affordable multifamily housing and the U.S. Department of Housing and Urban Development as probable factors that could decrease the affordable housing stock of the Commonwealth. In testimony presented at its 1987 and 1988 public hearings, the Commission was requested to examine the feasibility of decreasing or entirely eliminating the "trigger number" that determines which of the single family rental properties and condominium units in the state are covered by the Virginia Residential Landlord and Tenant Act. The Commission studied the redevelopment displacement, HUD expiring contracts, and landlord-tenant issues, as well as the new federal Fair Housing law, in 1989, and its recommendations follow.

1. Expiring HUD Contracts

Since 1930, the federal government has played a major role in providing housing assistance for lower income households. Federal housing programs, primarily administered by the U.S. Department of Housing and Urban Development (HUD), have included low-interest loans and rental subsidies to provide incentives and funds for the development of housing affordable to low-income persons. Among the programs established to provide increased low-income housing opportunities and containing contract provisions currently subject to termination by property owners are the Section 221(d)(3) and 236 programs of the National Housing Act, the Section 8 programs of the United States Housing Act of 1937, and the Section 515 programs of the Housing Act of 1949.

One of the purposes of the federal programs was to attract private investment in housing by offering low-interest, 40-year loans to investors who agreed to construct units for low-income tenants. The programs were designed to create a public-private partnership to provide additional affordable housing while enabling investors to receive an attractive return on their investment. In return for the below market interest rate loans, property owners were obligated to comply with rent structures established by HUD. After twenty years, according to HUD regulations, the property owners of such projects may prepay the loan and return their property to the private market.

Two key incentives motivated for-profit sponsors to develop housing under the federal programs. Sponsors could benefit from tax shelter advantages and they could earn profits by attracting limited partners who paid a premium to obtain a share of these tax shelters through syndication. The tax shelter benefits came primarily from accelerated depreciation of the property over a period of fifteen years. For the most part these tax advantages have expired and cannot be restored by re-syndication of the projects because of provisions of the Tax Reform Act of 1986. In addition, these programs provided very low (six percent) return on original equity.

Aside from the poor investment return, additional factors also place these multifamily projects at risk. Older well located projects in good condition that were built in sound areas originally or in fringe areas that have since undergone extensive increases in value are extremely vulnerable. Many of these projects are fully occupied by tenants paying maximum rents with almost no apartments assisted with special Local Management Set Aside (LMSA) Section 8 subsidies. The LMSA was provided for projects with high vacancy rates in weak market areas. The outstanding mortgages for these now highly valued developments were typically $10,900 to $15,000 per unit. Current appraisals would no doubt place their value in the range of $50,000 or more per unit. Modest cosmetic improvements would place them firmly in the middle income or condominium market bracket, increasing rents from the present $200-$300 per month level to perhaps twice that amount.

The potential loss of federally assisted housing units for low-income households is particularly critical in the Commonwealth.

In Virginia, developments in this category are located predominantly in northern Virginia and the major metropolitan areas. Projects built during the same period in locations that do not provide conditions for upscale value, sale, or conversion face a different threat to continued long-term low-income use. Many of the projects which are in low-income market areas were "bailed out" of difficulty with LMSA support during the 1970s. Since LMSAs have a maximum term of fifteen years, these subsidies will begin to expire in the 1990s, leaving the projects without vital financial support. Many of these projects need modernization and are burdened with the cost of additional mortgages imposed as a result of the transfer of physical assets (resale by original owners) and major repairs. There is a possibility that owners of troubled projects may abandon them through default or sale to speculators. Although they may continue to house low-income families, they will most likely do so in substandard conditions.

In response to the potential loss of hundreds of thousands of affordable units nationwide, the U.S. Congress passed the Emergency Low Income Housing Preservation Act as part of the Housing and Community Development Act of 1987. The Act imposed a two year moratorium (until February 5, 1990) on the prepayment of subsidized mortgages and, thus, on the conversion of affordable units to market-rate rents during this period. Even though the current mortgage or deed of trust permits prepayment, an owner may prepay only in accordance with a "Plan of Action" which the owner must submit to HUD for approval. Congress enacted these provisions as an interim measure to assure that affordable multifamily housing units were preserved and to minimize the displacement of low income families while the public and private sectors worked together to find long-term responses to the potential loss of this housing.

A bill has been introduced in Congress by the House of Representatives to extend current restrictions on prepayment for another two years. The Senate has not formulated a position on legislation to replace the Housing and Community Development Act of 1987, but is holding hearings regarding this issue.

In June 1989, HUD officials advised Virginia Department of Housing and Community Development staff that there was little support for such an extension of the moratorium provisions because continuing the moratorium would create additional legal problems and challenges, and because certain properties were no longer economical for HUD to maintain. Several breach of contract cases are pending before the federal courts as a result of the first moratorium and additional cases are expected to be filed if the moratorium is extended.

The potential loss of federally assisted housing units for low-income households is particularly critical in the Commonwealth. Virginia has the eighth largest number of "at-risk" housing units in the country, with approximately 17,000 federally assisted units in over 90 developments. The possible loss of these units is a major concern for many of the state's lower income households given recent real estate market trends that have included sharply rising housing prices and limited production of additional low-income housing units.

Overall strategies for preserving "at-risk" properties can be grouped into three broad categories: 1) incentives provided to current owners to maintain below market rents; 2) change of ownership to ensure the properties continue as lower income housing (i.e., ownership by public agencies or nonprofit organizations); and 3) regulatory actions that provide disincentives to prepaying loans.

The third preservation strategy, providing regulatory disincentives, is used primarily as a local option. Disincentives include imposing rent control ordinances on owners who prepay loans (a strategy currently used in Boston), and increasing parking requirements for properties whose owners opt-out of their program commitments. (The City of Alexandria implemented a similar provision for rental properties in January 1987.)

Strategies for preserving "at-risk" units include providing incentives to current owners to maintain below-market rents, and changing ownership to ensure the property continues as low-income housing.

The state's role in low-income housing preservation should focus on the first two strategies. The following Virginia Housing Study Commission recommendations are designed to encourage federal action, facilitate local preservation efforts, and provide direct state assistance in the preservation of "at-risk" low-income housing in the Commonwealth.

- The Commission will advise the Virginia U.S. Congressional delegation of its support for federal legislation to extend and expand the use of the Low Income Housing Tax Credit to enable such credits to be used as a preservation tool. The Commission will also request that the delegation support proposed federal legislation that would grant a right of first refusal to nonprofit organizations and state and local housing authorities for the purchase of housing developments prior to or at the end of the term of such tax credits. In addition, the Commission will request that the delegation support the proposed federal Community Housing Partnership Act, which could provide federal funding for nonprofits to purchase and operate low-income housing.

- The Commission recommends that the Virginia General Assembly, by Resolution, memorialize Congress to take strong action to resolve the present housing crisis created by the prepayment option on federal low-income housing contracts in order to assist in the preservation of low-income housing.

- The Commission recommends that the Virginia Housing Development Authority act as a preservation clearinghouse between property owners and public agencies or qualified nonprofit organizations interested in acquiring units with expiring HUD contracts. The VHDA would disseminate general background information to all Virginia localities where there are potentially "at-risk" projects, and request all localities to identify projects, based on local market conditions, location, financial return, and other factors, that place them at risk.

  The VHDA would also maintain an updated list of "at-risk" properties and initiate a dialogue with each current property owner once the owner has indicated an interest in or initiated prepayment. Assistance would be provided by matching prospective public and nonprofit organization property buyers with property owners considering terminating their HUD contracts. Other activities would include: developing an annual report to the Housing Study Commission on the status of "at-risk" properties in Virginia and efforts underway to retain them; designing procedures localities can use to analyze the potential for the conversion of properties to market rate units; and researching innovative strategies used in other states to maintain the units as affordable housing.

- The Commission also recommends that VHDA consider the feasibility of providing financial support to nonprofit organizations to acquire, rehabilitate, and operate housing developments facing expiring federal subsidies.

- The Commission recommends increased funding for the Virginia Housing Partnership Fund Multifamily Housing Rehabilitation Loan Program. This program could be used in the acquisition of properties subject to prepayment. Financial incentives for such loans could include low or no interest loans and loan payment deferrals. Approximately $21 million was available during the current biennium for this program. Applicants requested $38.6 million, indicating a need for an additional $17 million in multifamily rehabilitation assistance during this time period. As the number of properties subject to prepayment increases, the need for rehabilitation financing may become much greater.

- In 1990, the Commission will study the feasibility of establishing an alternative tax rate on income resulting from the sale of federally assisted housing to a tenant organization, qualified nonprofit organization, or a state or local housing authority. Such lower tax rate could provide an incentive to property owners to sell property to organizations that will retain low-income use restrictions, and enhance the ability of nonprofit organizations to compete for property in the private market.

- In 1990, the Commission also will examine the status of multifamily tax-exempt bonds issued previously to determine if existing affordable rental housing units financed with bonds may be converted to market rate rents during the 1990s. Project owners may exercise a ten to fifteen year option in their note to discontinue their agreement to retain a percentage of the units for low- to moderate-income households in exchange for the loss of their loan's tax exempt status. Tax-exempt bonds required 20 to 40 percent of the units financed to be occupied by persons earning between 50 and 80 percent of an area's median income.
- The Commission considered recommending legislation to protect low-income tenants of existing "at-risk" units to prevent displacement and possibly increased homelessness in the Commonwealth. However, it was determined that such legislation would be premature pending the recommended VHDA report on "at-risk" properties, and the Commission will address the issue of such legislation in 1990.

2. Multifamily Housing Redevelopment Displacement

The displacement of low- and moderate-income households as a result of redevelopment of multifamily rental units — whether HUD-assisted or open market — is a significant concern in the northern Virginia and Tidewater areas. The sale and/or demolition of older rental properties affordable for low- and moderate-income families often results in the displacement of those who can least afford to relocate in a housing market without affordable alternatives. In general the revitalization of urban areas results in fewer units affordable to lower income tenants, and as the demand for housing in a community increases, the cost of such housing, whether for rental or purchase, escalates, forcing out long-term residents who cannot afford to stay.

A major obstacle to gathering information regarding displacement resulting from redevelopment is that few cities know how many low-income families have been displaced from their homes. They generally do not have the resources and staff to document and monitor displacement activities. Efforts of communities that do track displacement generally focus on displacement resulting from the use of federal and state funds. In some instances where local government monies are involved, the local governments may require some type of relocation assistance to the families displaced.

For the purposes of this report, staff of the Virginia Department of Housing and Community Development Office of Housing Assistance surveyed Planning District Commissions, local economic development offices, city Community Development Block Grant offices, and housing authorities regarding displacement. Staff also contacted a number of nonprofit groups, which generally referred the inquiry to the local community development program or housing authority.

Sixty-one letters were mailed to the list agencies. Twenty-nine (48 percent) responded to the request for information. The respondents were categorized in three areas:

- Referred to other agencies, three (10 percent)
- Acknowledged some problem with displacement, ten (34 percent)
- No displacement taking place, sixteen (55 percent).

The City of Norfolk reported that 7,635 low-cost units have been demolished without the construction of comparable replacement housing. Arlington County responded that nearly 14,900 low- and moderate-income units have been demolished, rehabilitated with resulting higher rents, or converted to co-ops or condominiums without the construction of comparable affordable housing. And in Portsmouth, 429 units have been demolished and 831 affordable units have been lost to commercial or residential development or multifamily redevelopment. Five respondents indicated they have a relocation plan (Virginia Beach, Charlottesville, Portsmouth, Arlington County, and Martinsville).

Survey respondents indicated the following concerns:

- Loss of units will result from the expiration of federal rent subsidy contracts.
- Displacement of families will result from their inability to pay increased rents when units currently occupied by low- and moderate-income families are rehabilitated
- The General Assembly should enact legislation empowering local governments to design their own guidelines governing displacement.
- It is very difficult to track displacement created by privately financed redevelopment activities.
- Future displacement in some areas will take place in mobile home parks because they are in the path of expanding commercial development.
- The state should require localities to keep data and monitor displacement.

Rental rehabilitation is an essential component of urban revitalization that should not be impeded by unnecessary or inappropriate regulation or expense. Nonetheless, the impact on individual lower income renters can be severe. The rising cost of housing, low rental vacancy rates, long waiting lists for public housing due to the reduction in federal subsidies in past years, the loss of apartments to demolition or condominium conversion, and the potential erosion in the federally subsidized housing inventory as owners opt to prepay their notes can force those displaced by rental rehabilitation to relocate to inadequate housing at a higher cost, or in many cases, to enter the ranks of the homeless.

In 1989, the Virginia Housing Study Commission considered various legislative strategies to regulate multifamily redevelopment in cases where displacement is likely to occur. Such strategies include requiring notice to tenants, a relocation plan, financial assistance and housing counseling for tenants displaced, and special leases for elderly or disabled tenants. The Commission also considered financial benefits, such as property tax abatements and income tax credits, which could offset expenses incurred by developers in mitigating the displacement effects of multifamily rental redevelopment. The Commission concluded that the introduction of statewide legislation regulating multifamily redevelopment displacement would be premature at this time. Rather, the Commission will evaluate the feasibility of such legislation in conjunction with the ongoing study of the expiring HUD contracts issue discussed in the preceding section of this report.

The Commission recommends the elimination of all exemptions from the Landlord and Tenant Act for single family rental housing units.

3. Virginia Residential Landlord and Tenant Act

At the recommendation of the Virginia Housing Study Commission, the Virginia Residential Landlord and Tenant Act was enacted by the 1974 Virginia General Assembly to clarify the rights and obligations of landlords and tenants under a rental agreement. Specifically, this legislation was designed to:

1) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;
2) encourage landlords and tenants to maintain and improve the quality of housing; and
3) establish a single body of law relating to landlord and tenant relationships throughout the Commonwealth.

Rental housing units, including most multifamily facilities and all apartments, are covered by the Act, but certain units, notably single family residences where the owner of the property owns ten or fewer such rental residences, are exempted from its provisions. Single family housing represents a significant number of rental units in Virginia. In 1980, the number of renter-occupied one-family housing units (including only single family detached or attached units) was approximately 240,000 out of a total of 641,483 renter-occupied units in the state. It can be reasonably assumed that a significant number of those units are owned by persons who own ten or fewer single family units and are therefore exempted from the provisions of the Act.

One of the original intents of the exemption of certain single family units from the Act was to protect small property owners from additional rules and requirements of a state landlord and tenant law. The Act provides specific guidance in areas of rental contract agreements including application fees, security deposits, written leases, oral agreements, disclosure, inspections, payment of rent, services, right of access, and remedies for violations. Statutory coverage of such complex areas of rental contract law provides needed guidance to the small landlord and may assist such landlords and their tenants avoid disputes and court action.

Although single family housing represents about 30 percent of the total number of rental housing units in Virginia, a recent survey conducted by the Virginia Poverty Law Center at the request of the Virginia Housing Study Commission indicated that over 41 percent of the landlord-tenant disputes involved units not covered by the Act. Pursuant to such study, the thirteen Virginia legal aid programs were asked to keep a record of landlord-tenant interviews during a two-week period in July 1989. Seven of the thirteen programs responded to the survey, including: Rappahannock Legal Services, Southside Virginia Legal Services, Peninsula Legal Aid Center, Legal Aid Society of the Roanoke Valley, Virginia Legal Aid Society, Blue Ridge Legal Services, and Southwest Virginia Legal Aid Society.

During the survey time frame, the respondents carried out 46 interviews of persons having private landlord-tenant disputes. All but one of the interviewees was financially eligible for assistance under the Legal Services income guidelines (125 percent of the federal poverty index, e.g., an income no greater than $13,750 for a household of four). Of the 46 cases, 41.3 percent were not covered by the Landlord and Tenant Act. The average household involved at least one disabled person. By extrapolation, then, the Legal Services Corporation suggests that annually 1,587 legal aid landlord-tenant disputes, involving 5,236 persons (of whom nearly 800 are disabled), would not be covered by the Act as it now stands.

Small property owners, tenants, and the court system could benefit from reducing the often time consuming and expensive landlord-tenant disputes and settlements through mandatory coverage under the Act. Since the original intent of the provision regarding single family housing units in the Virginia Residential Landlord and Tenant Act was to assist small property owners, a new assessment of what constitutes a "small" property owner may be appropriate. The average home sales price in Virginia during the last half of 1988 was $115,640. While this figure is somewhat inflated as a statewide home sales price due to the inclusion of high housing costs in northern Virginia, it does indicate that

owners with up to ten single family units may have over $1,000,000 in real estate holdings. Even with more moderately priced houses in the $50,000 to $60,000 range, owners with up to ten units could approach $500,000 in real estate holdings. Such property owners arguably do not need protection from certain state requirements designed for small scale investors.

Current Virginia law provides a dual system of landlord and tenant law: one based on clearly defined rights and obligations of all parties to a rental agreement under the Act, and one based on often confusing and inadequate rental agreements and the courts' interpretations of those agreements. Protection and guidance to landlords and tenants of single family housing units are based solely on how many such units a particular landlord owns. The Commonwealth would provide increased equity among renters and landlords if the law were based solely on the existence of a rental agreement rather than the single family housing ownership totals of a landlord. For these reasons, the Virginia Housing Study Commission recommends the elimination of all exemptions from the Virginia Residential Landlord and Tenant Act for single family rental housing units.

The Commission recommends that the 1990 General Assembly enact legislation that will allow the Commonwealth to maintain its status as being substantially equivalent to the federal government in the enforcement of fair housing laws.

4. Fair Housing

Last year the federal government amended the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing. Under the law as it existed before the amendments, Virginia had gained the status of having a state fair housing law that was "substantially equivalent" to the federal law. The status has allowed Virginia to enforce both the state law and the federal law using state personnel. In states that do not have "substantial equivalency," the United States Department of Housing and Urban Development enforces the federal act.

Under the Virginia Fair Housing Act it is unlawful to discriminate against a person in the sale or rental of housing because of race, color, religion, national origin, sex, elderliness, parenthood, or handicap. Prior to enactment of the 1988 amendment the federal law did not include the categories of "familial status" and "handicap" as conditions that cannot be used as a basis for discrimination.

The federal law includes extensive definitions for both "handicap" and "familial status." "Handicap" means, with respect to a person, (1) a physical or mental impairment which substantially limits one or more of the person's life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. "Familial status" means one or more individuals under eighteen years old being domiciled with (1) a parent or another person having legal custody of such an individual, or (2) the designee of the parent or other person with legal custody, with the written permission of that person. The definition also applies to any person who is pregnant or is in the process of securing legal custody of someone under eighteen years old.

Another significant difference between the two laws is the existence under the new federal law of a hearing by administrative law judges as a forum for addressing the grievances of the parties. Although under the Virginia law hearing officers may be utilized in cases where the Virginia Real Estate Board chooses to conduct a hearing to consider whether to suspend or revoke the license of a real estate broker or salesperson found to have violated the provisions of the Fair Housing Law, the state has no equivalent administrative forum for adjudicating complaints against those not professionally involved in real estate practice.

In summary, the differences in the definitional and remedy sections of the Virginia and federal laws likely have implications for Virginia's continuing status as a state having substantial equivalency. The Virginia Department of Commerce has drafted amendments to the state law which it believes would bring the Commonwealth into substantial equivalency with the federal law. The Department has submitted the draft amendments for review to the Governor's Office. The Housing Study Commission recommends that the 1990 General Assembly enact legislation that will allow the Commonwealth to maintain its status as being substantially equivalent to the federal government in the enforcement of fair housing laws, and will endorse the recommendations of the Governor pursuant to the Virginia Fair Housing Act amendments.

Rural Housing

Although the metropolitan regions of Virginia grow increasingly prosperous and politically important, much of the Commonwealth remains rural in character. Rural Virginians are among the poorest of poor state residents, and their deteriorating housing stock reflects its age and lack of improvements. In 1989, the Virginia Housing Study Commission focused on rural housing issues, and particularly on the social, health, and environmental impact of inadequate, unsafe, unsanitary water and wastewater facilities of tens of thousands of isolated rural residents. Commission recommendations on these issues are presented in this section of the report.

During the past two decades various public, private, and nonprofit organizations have established a variety of programs designed to ensure safe, sanitary water and wastewater facilities for residents of the Commonwealth. Although many of these efforts have proved highly successful, thousands of Virginia households, predominantly in rural areas, continue to suffer the consequences of inadequate, contaminated, or otherwise suspect sources of potable water; improper or nonexistent wastewater facilities; or a complete lack of indoor plumbing. In addition to its impact on the individual household, inadequate sanitation poses a dual threat to both public health and the natural environment.

Several information sources together convey the character of Virginia's water/wastewater problems. The Census count of housing units lacking complete plumbing is indicative but not comprehensive. Estimates by local sanitarians include problems overlooked by Census criteria but are themselves incomplete. State Health Department and Water Control Board estimates of future needs and current deficiencies tend to emphasize public water and wastewater treatment systems in the metropolitan regions if for no other reason than the great cost associated with them.

In a relative sense, some parts of the water/wastewater problem have been diminishing over time, but they will persist unless additional measures are implemented. Virtually all of the new homes constructed in Virginia since 1973 satisfy the basic requirements of the Uniform Statewide Building Code, which includes water and wastewater provisions. Older homes with inadequate facilities have thus become a smaller proportion of the total housing stock. The number of homes lacking complete plumbing has fallen from 226,000 in 1960 to 186,000 in 1970 to just over 100,000 in 1980. Perhaps 60 percent of these homes were located in rural Virginia in 1980. If the long-term trend has continued in this decade the next Census may find more than 45,000 units lacking complete plumbing.

But most new construction (more than three-quarters in most years) has taken place in metropolitan Virginia. In many rural Virginia counties and non-metropolitan urban locales, by contrast, inadequate facilities will continue to remain a relatively significant feature of the local housing stock. Although the absence of complete plumbing facilities may be a problem on its way to an eventual and long-awaited extinction, other aspects of the rural water/wastewater problems are less tractable and may be becoming more serious with the passage of time. Even homes with indoor plumbing may have failing septic systems or seriously compromised water sources. An estimated two percent of Virginia homes (45,000 units) may have failing or inadequate wastewater disposal systems. The bulk of these systems tend to be individual on-site systems. Fifty-two percent of the individual drilled or dug wells in the Commonwealth are estimated to be suspect because of inadequate or unapproved construction techniques. And many of the other miscellaneous sources of drinking water upon which people rely (e.g., springs or other surface waters) may present serious risks to health.

Geography and geology can conspire to make these deficiencies a matter of community as well as individual concern. Shallow or improperly lined wells in areas with highly

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permeable soils are susceptible to contamination from a variety of sources, including drainfields. Improperly constructed wells that penetrate shallow aquifers enroute to deeper water-bearing strata can themselves become conduits transferring organic and inorganic pollutants to formerly pristine sources. What began as a serious individual problem—a contaminated well—can eventually become a hazard for anyone sharing the same water source.

In some parts of the Commonwealth pollution of surface waters by effluent from failing on-site sewage systems may be endemic. The absence of either publicly maintained systems or a mechanism for assuring the continued effectiveness of private on-site systems has left many local water sources in southwest Virginia as well as elsewhere vulnerable to contamination.

The General Assembly Joint Subcommittee Studying Pollution from Untreated Sewage Discharges and Failing Septic Tanks documented many of these problems in 1989 and suggested means to alleviate at least some of them. The Subcommittee also argued strongly for the equity of providing governmental funding and services to users of on-site systems. These systems have relieved local governments from the cost of providing community-funded water and wastewater systems. Yet taxpayers with on-site systems have sometimes subsidized users of central systems. In addition to any existing local inequities, well and on-site sewage system application fees collected by the Department of Health had not been fully used in support of that agency's on-site water and sewage programs at the time of the Subcommittee's report.

There are a number of compelling reasons for taking effective action to reduce the number of homes lacking indoor plumbing, safe water supplies, or adequate means for wastewater disposal. Such reasons range from concern for the welfare of those living in poverty to the protection of the environment as well as the public's health and safety. Furthermore, there is only a slim prospect of additional federal assistance in solving this problem.

Committing the Commonwealth to a long-term program addressing residential water and wastewater challenges could also reinforce other efforts to improve environmental quality and public health. Indeed, without continuing to press ahead with programs to help rural low- and moderate-income households secure adequate supplies of safe drinking water, appropriate means for wastewater disposal, and modern plumbing facilities, it is questionable that Virginia could ever achieve its objectives for environmental quality and public health. Pollutants, of course, make distinctions among neither their sources nor their effects.

Several programs have assisted Virginia households to upgrade plumbing facilities, water supplies, and wastewater treatment. Virginia Water Project, Inc., a nonprofit organization, has for more than a decade been at the forefront of efforts to provide safe, sanitary residential water and wastewater facilities. In addition, Community Development Block Grant funds and, in the Chesapeake Bay region, the Residential Shoreline Sanitation Program, have provided economic and public health benefits as well as environmental protection. The Virginia Housing Fund and the Housing Partnership Fund also have the potential for providing loans to aid households in upgrading their water and sanitary facilities.

However, none of these approaches is likely to extinguish the kind and magnitude of problems facing many rural Virginians. The Shoreline Sanitation Program has a limited geographic focus. Block Grants are used for a variety of purposes and are awarded through a competitive process that limits their impact in any single community. Revolving loan funds, while bringing the cost of financing essential home improvements within the range of additional lower income Virginians, are of little use to households with incomes or assets so small that they cannot repay a loan with even the most generous of terms.

In fact, those portions of the state with concentrations of water, wastewater treatment, and plumbing inadequacies are frequently also those areas with per capita incomes below the state median, relatively high percentages of households living in poverty, or consistently higher levels of unemployment. Typically,

such areas have been dependent upon economic activities such as mining, farming, and fisheries that are not associated with the higher wages available in metropolitan Virginia. Thus, it is not surprising that a significant proportion of these remaining units may be in circumstances that do not qualify for assistance under existing programs.

In 1986, Virginia Water Project convened a statewide conference designed to discuss solutions to the Commonwealth's rural water and wastewater needs. The conferees agreed that to solve the overall problem, there first was needed a definitive statement of its nature and magnitude, and then an action plan with a realistic timetable. Virginia Water Project followed up on this conference recommendation, and in 1988 released *Water for Tomorrow*, an invaluable county-by-county compilation of available data on Virginia's water and wastewater needs, and estimated costs of meeting those needs.

After preliminary general study of rural housing issues in 1987 and 1988, the Virginia Housing Study Commission in 1989 took a leadership role in addressing the need for safe, sanitary water and wastewater facilities for isolated rural low-income Virginia households. Soon after the 1989 General Assembly adjourned, the Commission director met with the director and key staff of Virginia Water Project to discuss the feasibility of a ten-year plan to ensure safe, sanitary water and wastewater facilities for all Virginians. Commission staff requested the meeting in response to information contained in *Water for Tomorrow*, testimony presented at Commission public hearings, and a growing recognition that Virginia Housing Fund and Virginia Housing Partnership Fund monies will not, on their own, meet the water/wastewater needs of Virginia's poorest residents.

From that Roanoke meeting grew the concept of a single-purpose fund, to be blended with or used to leverage monies from existing grant or loan programs. Fund monies would be allocated to address the social, health, and environmental challenges posed by inadequate or nonexistent water/wastewater facilities of thousands of Virginia households. The Commission came to embrace the concept of a grants program that, together with natural attrition and other public and private efforts, would effectively reduce the number of Virginia residences lacking complete plumbing to near zero, and also make significant strides in solving other on-site water and wastewater problems.

The Virginia Housing Study Commission recommends that the General Assembly establish a grants program to meet Virginia's water and wastewater challenges. The Commission understands the budgetary constraints facing the General Assembly as it considers the state budget for the 1990-92 biennium, but urges that the proposed water/wastewater grants program be considered a top priority.

The Commission recommends that the program be capitalized in the amount of $3.5 million annually during the next biennium. The program would be administered by the Virginia Department of Housing and Community Development, with technical assistance provided by Virginia Water Project. The fund would emphasize the use of nonprofit housing organizations in identifying and correcting rural water supply, wastewater facility, and inadequate plumbing problems. An additional appropriation of $500,000 annually would provide administrative support for use by nonprofit agencies in community outreach and actual program delivery. Activities eligible for funding would include the construction or rehabilitation of both on-site water and wastewater facilities as well as the provision of indoor plumbing. Where required, the program's indoor plumbing component could provide for the construction of additional living space, sometimes referred to as an "add-a-bath," to accommodate necessary fixtures.

The role of nonprofits, which can tap into reserves of good will from local merchants as well as reservoirs of volunteer labor, has the potential to cut the per unit cost for significant improvements to water, wastewater, and plumbing deficiencies. This approach has been used successfully in neighboring states, and complements the approach of the Virginia Housing Partnership Fund and the Virginia Housing Fund.

The program would upgrade by new construction or rehabilitation the water/wastewater facilities of approximately 400 households per year. Meeting this goal would require, on

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Virginia Water Project, Inc.

average, the participation of twenty local or regional organizations, each capable of completing twenty individual upgrading projects during each program year. Still other locally-based groups might be able to participate in various aspects of the program, such as community outreach, depending upon the level of administrative expertise required by the program's structure.

Costs per unit could vary considerably,and are dependent upon the state geographic region of project location, the type and severity of the deficiencies to be remedied, and the method used to correct them. Data available from projects both outside and within Virginia, however, facilitate approximate program costs. Estimates of the cost associated with bringing individual drilled wells up to current standards range from a few hundred dollars to $2,000 per well. Total costs for obtaining an approved source of water range from the hundreds of dollars to more than $4,000 per site.

Drainfield costs reflect the types of soil present as well as other variables such as the cost of labor and materials in different parts of the state. These costs have been variously estimated at about $1,200 per unit in some areas to as much as $5,000 per site in higher-cost Fairfax County. The statewide average is approximately $1,500 per unit based on information compiled by Virginia Water Project.

The cost of providing complete plumbing to an existing house depends not only upon the availability of and cost for contractors, but whether a bathroom requires an addition or can be included within the existing building envelope. In the former case, actual costs have ranged from a low of approximately $3,600 in a South Carolina program (which took advantage of the availability of vocational/technical school programs to build prefabricated units) to as much as $6,000 in some recent Virginia examples where commercial contractors were used extensively.

Although a number of variables can affect the actual cost of providing safe water and wastewater facilities, it is still possible to estimate average per unit costs. The fact that many of the water-related problems are concentrated in areas with lower housing and construction costs may help to hold down the averages. In general, approximately $8,500 per unit should provide the necessary facilities. This includes $1,500 for drainfield and septic tank installation or correction, $2,000 for providing a safe and approved source of drinking water, and $5,000 for the construction of a bathroom.

Eligibility for program grants would rest on two general criteria. The first would consider the environmental and public health problem posed by the inadequate facilities. If pollution of the individual water source or pollution of surface or subterranean water sources were demonstrated the household could be eligible for participation. The second criterion would consider the income and resources of the household. Where the household lacked the financial capacity either to pay directly or repay a loan at conventional or even subsidized rates, the program would provide the required funds.

No other state has committed to a plan to ensure safe and sanitary water/wastewater facilities for its residents. Yet, as Virginia Water Project noted in a report issued in November 1989, "Access to safe drinking water and sanitary means of wastewater disposal have been considered critical to the public health and well-being since the arrival of the first colonists, and indeed are considered a benchmark of civilization itself." As a leader among the states in housing and in other fields, Virginia can once again demonstrate a leadership position in addressing the crucial housing-water interrelationship.

An annual General Assembly allocation of $4 million during the next biennium—and continued funding at that level throughout the 1990s—would virtually guarantee that Virginia would enter the next century having provided for safe and sanitary water and wastewater facilities for all residents of the Commonwealth.

The Housing Study Commission will continue to examine rural housing issues in 1990. In conjunction with its study, the Commission will seek to convene a conference focusing on rural housing problems and their solutions. The targeted conferees would be regional and local officials and administrators in rural areas, and others interested in the conference topic.

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Conference co-sponsors could include the Virginia Department of Housing and Community Development, Virginia Housing Development Authority, Farmers Home Administration, Virginia Association of Counties, Virginia Center for Housing Research, Virginia Association of Planning District Commissions, Virginia Water Project, and other organizations. The Commission also makes the following recommendations pursuant to rural housing in the Commonwealth.

- The Commission recommends that the 1990 General Assembly name an existing joint subcommittee or commission or a new body to consider and recommend policies and strategies for alternative sources of financing Virginia's water and wastewater infrastructure and water quality needs through the year 2005. The study group would report on its findings to the 1991 General Assembly.
- The Commission encourages the Virginia Extension Services of Virginia Polytechnic Institute and State University and Virginia State University to place special emphasis on affordable housing programs through their extension agents working throughout the Commonwealth.
- The Commission encourages the Farmers Home Administration to increase its rural housing loan and grant activity in areas pre-sently inadequately served by such programs.
- The Commission recommends the establishment of a fund to assist nonprofit housing development organizations serving rural areas cover predevelopment costs such as site acquisition, architectural and engineering fees, and expenses associated with packaging housing projects.
- The Commission recommends that each Planning District Commission, in cooperation with Virginia Water Project and existing extension agencies, provide coordination, cooperation, planning, education, research, and technical assistance for local governments and agencies involved in low- and moderate-income housing.

Growth Management

The population of Virginia is increasing at dramatic levels, and the Commonwealth is now one of the fastest growing states in the nation. With this explosive growth, however, come local and regional concerns about adequate infrastructure to support the increasing numbers of residents. Indeed, some localities have imposed controls designed to slow or halt growth. Such controls, implemented primarily through the land use process, can raise the cost of housing in the area imposing the controls, and effectively exclude lower income households from the community. In 1989, the Virginia Housing Study Commission examined several land use and growth management housing issues, including strategies for streamlining the land use process, regulation of manufactured housing, and exclusionary zoning. In addition, at the request of the Commission, the Virginia Department of Housing and Community Development Office of Policy Analysis and Research conducted a survey of local land use practices in the Commonwealth. Following are a summary of survey results, as well as Commission recommendations relating to land use and growth management issues.

1. Summary: Survey of Local Land Use Practices

- During June and July 1989, the Department of Housing and Community Development initiated a survey of Virginia localities to obtain information for the Virginia Housing Study Commission on local land use practices affecting housing. The survey was distributed to all cities and counties with zoning ordinances. A 72 percent response rate was achieved.
- The average minimum lot size for land zoned agricultural was 3.63 acres. Metropolitan localities averaged larger minimum lot sizes for agriculture than non-metropolitan communities, reflecting the prevalence of large lot zoning as a growth management tool in metropolitan areas. Twelve localities required minimum lots of five acres or more, with one requiring 50 acres.
- The average minimum residential lot size was about one-third of an acre. The average in metropolitan areas was 7,255 square feet, and 19,449 in non-metropolitan localities.
- Multifamily housing is an accepted use in most localities: 96 percent of cities, 76 percent of counties, 97 percent of metropolitan localities allow this use by right in one or more residential districts. Of all the localities, 76 percent currently have vacant land zoned for multifamily uses.
- Only about seven percent of the localities totally exclude manufactured housing. The vast majority regulate them through mobile home park districts (76 percent include single-wide units, 67 percent double-wides). Twenty-five percent allow single-wide homes in agricultural or residential districts, while 42 percent allow double-wide homes in residential districts and 35 percent in agricultural districts. Over 40 percent claim to have vacant land zoned for mobile home parks and subdivisions.

- Localities are using flexible zoning techniques, such as planned unit developments (71 percent), incentive zoning (33 percent), and mixed-use development (42 percent). Their use is even greater in metropolitan communities.
- Alternative housing types are allowed in a larger than expected number of communities: 41 percent permit accessory apartments, 33 percent accept echo housing, and 45 percent allow shared housing.
- Jurisdictions have made significant efforts to reduce regulatory delay: 93 percent provide for a pre-application conference, 63 percent have a one-stop permitting center, 92 percent encourage planning commission training. Areas of possible concentration include fast-tracking projects (32 percent) and permit expeditors (12 percent).
- Several of the respondents took the time to write in about innovative ways they have tried to improve their regulatory procedures, such as joint review committees, mandatory timetables for staff review, and increased use of computers.

2. Streamlining Local Land Use Regulation

The impact of local regulations on the development process continues to be a matter of serious concern to the development community and affordable housing advocates. Inevitably, governmental regulation intended to protect citizens' health, safety, and welfare includes the direct costs of compliance with the standards of locally-administered zoning ordinances and building codes. But, aside from the direct costs associated with development regulations, the very process of compliance carries its own price tag.

Generally, this price reflects opportunity and carrying costs incurred when a project is delayed. While developers factor in such costs, unanticipated or unnecessary delays can have a serious impact on the viability of a development project. Because the industry is still comprised of a surprisingly large number of small and medium-sized companies, delays associated with the regulatory process can decide whether or not the business flourishes.

The high cost of raw land in rapidly growing regions of the Commonwealth magnifies the problems associated with delay. Complexity and scale of development proposals and equally complex regulations designed to respond to them have transformed traditional zoning and subdivision practices. The increased use of discretionary zoning methods leads to more protracted review periods and de facto negotiations between the affected locality and the developer. At the same time, the potential fiscal consequences of large-scale residential development—given Virginia localities' reliance on the property tax—appear to loom constantly larger.

For their part, local governments require sufficient time to weigh the decisions they must make in connection with requests for zoning changes. Once land use decisions are made, their future impacts, in a practical sense, may not be easily revoked. Therefore, any proposals seeking to limit local regulatory powers must carefully balance reductions in the time required to complete the regulatory process against the the need for that process to be complete.

The impact of local regulations on the development process continues to be a matter of serious concern to the development community and affordable housing advocates.

Enabling legislation controlling subdivision and zoning in Virginia has recently given more attention to potential problems associated with delays. Public notice requirements, which often set the temporal framework for zoning decisions, are clearly established in §15.1-431 of the *Code of Virginia*. Planning commission inaction cannot indefinitely forestall a decision on a zoning change request, and §15.1-493 provides that if a planning commission fails to make a recommendation within 90 days, that inaction constitutes approval. Local governments may require their planning commissions to act within a shorter period, though local governing bodies are not themselves so constrained.

Subdivision review has also been constrained by state enabling legislation and the courts have reinforced the requirement for prompt review and action. Should the local reviewing authority, which could be the planning commission or a subdivision agent, fail to act within 60 days, the developer may petition the local circuit court for judicial review and possible approval of the plat or plan.

Unlike zoning, which is virtually the sole province of local government, subdivision and site plan review frequently involves state agencies. The 1986 and 1989 General Assemblies acted to place state agencies under constraints similar to those applicable to local governments. State agencies, specifically including the Virginia Department of Transportation, are now required to complete their review of plats within 45 days. The local authority then has 35 additional days to act on the plat. If the locality provides for planning commission review of preliminary plats, this local review period may be extended to 45 rather than 35 days. Although site plans and plats could once be held up for indefinite periods, they now should receive a complete review within 80 to 90 days. Section 15.1-475 of the *Code*, requires the completion of all phases of the review within 90 days. If the reviewing authority neither approves nor disapproves the plat in question, the subdivider may seek redress in the circuit court, which is itself empowered to direct approval of the plat.

Enabling legislation has not similarly constrained the zoning process. Section 15.1-491 (g) of the *Code* requires counties, but not municipalities, with zoning ordinances to act on rezoning requests "within such reasonable time as may be necessary" so long as that does not exceed twelve months. All zoning amendments must be reviewed by the local planning commission before final action by the governing body. Should the planning commission fail to report its recommendation on the request for a zoning change within 90 days, §15.1-493 (B) provides that the failure to act constitutes approval of the request. The proposal may then return to the governing body for final action. Local governing bodies are also empowered to shorten the required reporting period.

Changes to the existing enabling legislation could mandate shorter periods for advisory actions by the local planning commissions. However, even without the imposition of new statutory requirements, localities can take steps on their own to make the administration of the process much smoother and less burdensome on the applicant as well as their own staff. Indeed, a number of Virginia localities have adopted a variety of measures designed to do just that.

The Department of Housing and Community Development 1989 land use survey, summarized in the previous subsection of this report, queried cities and counties to determine whether they had taken any administrative actions to help reduce regulatory delays that unnecessarily impeded the development process. In addition to asking about six specific steps, the survey gave local planning personnel the opportunity to report on any other regulatory improvements they had recently initiated.

Almost all survey respondents reported that they now use *pre-application conferences* to familiarize developers with the circumstances surrounding a specific development proposal. The intent is to familiarize the applicant not only with current procedures, personnel, and requirements, but also with the probability of approval and the time likely to be required to accommodate the approval process. Positive effects of this approach

Even without the imposition of new statutory requirements, localities can take steps on their own to expedite the administration of the land use process.

include more complete applications, a reduction in procedural errors by the applicant, and possibly decisions by applicants to forego projects with marginal possibility for approval.

About two-thirds of the respondents reported the use of a single *"one-stop" permitting center.* The use of a single point for picking up and dropping off applications and related documents, conveying basic information to applicants, and providing an initial screening for completeness has many potential benefits. Applicants can avoid the loss of time and the expenses associated with multiple agency visits, and incomplete or incorrect applications may be detected at an early stage of the process and corrected before significant losses of time take place.

Only about one-third of the localities have attempted to implement *"fast-tracking."* As defined in the survey, this constitutes a process for separating projects with relatively minor impacts for accelerated review and approval, freeing citizen planners, reviewing staff, and the applicant from unnecessary delays.

Only a handful of localities reported the use of *"permit expeditors,"* staff members who are responsible for tracking development proposals to assure that they are not delayed or sidetracked during multiple-agency review.

Localities did demonstrate their willingness to *upgrade the lay review phase* of the planning process. Over 90 percent encouraged their planning commissioners and zoning appeals board members to participate in the training and certification programs offered by the Department of Housing and Community Development and other sponsors. Citizen planners with a better understanding of their responsibilities and powers may be able to reach reasoned decisions with more dispatch, produce decisions that rest upon a sound body of fact, and serve not as a stumbling block for applicants but as an important and trusted source of advice for the governing body.

Adequate staff work is essential to the efficient operation of the zoning process, and fees associated with applications for zoning actions should be sufficient to support the process. Adequate staffing levels can prevent delays caused by large backlogs of projects. More than half of the localities responding to the survey noted making *adjustments in fees* designed to recover the cost of processing applications.

None of these strategies required the stimulus of statutory changes. Localities seeking to deal responsibly and fairly with applicants, reduce their own out-of-pocket costs, and expedite the flow of work—with consequent savings for applicants—may wish to explore these and other relatively well-known methods for improving the regulatory process.

The Virginia Housing Study Commission commends these land use administrative strategies to Virginia counties and municipalities, and recommends the following legislative action designed to streamline the local land use process.

- Amend §15.1-493 (B) of the *Code of Virginia* as follows to restrict the time initially granted to local planning commissions for the review of zoning requests.

  B. No zoning ordinance shall be amended or reenacted unless the governing body has referred the proposed amendment to the local commission for its recommendations. Failure of the commission to report ~~ninety~~ sixty days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, or such shorter period as may be prescribed by the governing body, shall be deemed approval, unless such proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of such time period...

- Amend §15.1 of the *Code* to include enabling legislation authorizing localities in which the planning commission serves as the agency for reviewing and approving preliminary or final plats to permit such commission to waive a public hearing prior to plat approval. Such action could free the docket of the planning commission for the conduct of more substantive matters as well as reduce the cost to the party seeking plat approval.

Manufactured housing advocates consistently indict local regulations as the culprit primarily responsible for inhibiting more widespread use of this housing form.

3. Manufactured Housing

For a variety of reasons, ranging from concern with aesthetics to fiscal impact, manufactured housing continues to face a number of locally imposed and administered regulatory barriers in the Commonwealth. At the time of the 1980 Census 4.7 percent of Virginia's year-round housing consisted of mobile homes or manufactured housing units. This percentage was below the national average. More significantly, only sixteen states had a lower proportion of manufactured units, and in the South Census region, only Maryland had a lower proportion. These figures suggest that Virginia may be shortchanging one possible source of affordable housing, and other data appear to support this contention. In 1986, for example, manufactured housing sales in neighboring North Carolina were approximately four times as great as in Virginia, despite the many areas of comparability between the two states.

Manufactured housing advocates consistently indict local regulations as the culprit primarily responsible for inhibiting more widespread use of this housing form. The state's preemptive building regulations, which incorporate the federal manufactured housing safety standards (usually referred to as the HUD Code) have largely prevented localities from discriminating against manufactured and modular structures solely on the basis of the materials and methods of their construction.

Land use regulations remain the primary local impediment to use of factory-built units. Virginia counties have used the following approaches:

- Limit the permanent placement of manufactured housing to mobile home parks.
- Limit the permanent placement of manufactured housing to mobile home parks but also permit temporary or hardship uses in other zoning districts by conditional use permit.
- Permit permanent placement in mobile home parks by right and permit permanent placement in other zoning districts subject to the granting of a conditional use permit.
- Permit permanent placement in mobile home parks and in one type of agricultural zoning district by right; in other districts a conditional use permit is required.
- Permit permanent placement by right in mobile home parks and in agricultural zoning districts.
- Permit permanent placement by right in mobile home parks and several other zoning districts. In some cases distinctions have been made between single-wide and double-wide units, with the latter being accepted in substantially more districts.
- Permit permanent placement by right in mobile home parks and a specially created manufactured housing subdivision.

Judicial and legislative action in several states has weakened zoning restrictions similar to those employed by Virginia jurisdictions. Cases in Illinois, Michigan, Pennsylvania, and notably the *Mt. Laurel II* case in New Jersey have supported the more extensive use of the manufactured home option. Court cases in states as diverse as Montana and Maine have also lent support to a lowering of local restrictions. These decisions offer useful precedent and suggest possible legal challenges to overly restrictive regulations, but they are neither binding in Virginia nor necessarily indicative of judicial responses that could be anticipated in the Commonwealth.

A legislative remedy may produce results more certain and more uniform than legal challenges introduced locality by locality. Legislative action in at least fourteen states has attempted to tip the regulatory balance somewhat more favorably in the direction of manufactured housing. In 1976, Vermont prohibited by statute any municipal zoning regulation having "the effect of excluding mobile homes, manufactured housing or other forms of prefabricated housing . . . except upon the same terms and conditions as conventional housing is excluded." Significantly, the statute prohibits local ordinances that treat manufactured housing as subject to the granting of a conditional use permit where site-built housing is a permitted use.

Neighboring New Hampshire prohibits municipalities from barring "manufactured housing completely from the municipalities by regulation, zoning ordinances, or . . . other police power." Manufactured housing units are subject only to the same yard and setback requirements applicable to conventional single family housing. But the same statute also allows "manufactured housing to be located on individual lots in some, but not necessarily all, residential areas within the municipality."

California prohibits cities and counties from barring "the installation of mobile homes certified under the [HUD Code] on a foundation system . . . on lots zoned for single family dwellings." Localities are permitted, however, to designate specific areas within single-family zones for use by manufactured units and to prescribe a variety of zoning restrictions, including minimum square footage, as well as roof and siding design and materials standards.

Indiana permits similar restrictions on roofs and on siding but otherwise authorizes manufactured housing to be subject only to those requirements applicable to conventional housing.

Several other states, including Kansas, Minnesota, and Tennessee, have limited their legislation to prohibiting the total exclusion of manufactured housing without actually proscribing any local restrictions that may effectively bar the units. And Tennessee's definition permits single-wide units to be excluded totally under local regulations. Florida's statute is even softer than Tennessee's, requiring only that local regulations "be reasonably and uniformly applied and enforced without any distinction as to whether a building is conventionally constructed or a manufactured building."

Rationales for state preemptive legislation are varied. Advocates for manufactured housing make four basic points:

- Manufactured housing units are now of a much higher quality and can be much more aesthetically pleasing than in the early days of the industry.
- Since the advent of the HUD Code, the structural characteristics of manufactured housing units have improved greatly. They now equal or exceed those of site built units. Properly anchored and maintained units can have useful lives equivalent to those of conventional housing and satisfy any rational test for assuring public health and safety.
- The more durable and seldom-moved contemporary manufactured home has taken on most of the characteristics of other forms of realty, including appreciation rather than depreciation over time, thereby weakening arguments that the units represent more of a tax burden than other types of housing.
- The apparent lack of affordable housing in many communities begs for as many effective solutions as possible. Unnecessary restrictions placed on manufactured units foreclose one possible option for affordable, owner-occupied shelter.

Virginia's localities cherish their autonomy in shaping the specific provisions of their zoning ordinances, and any effort to modify local policies that tend to exclude manufactured housing cannot be undertaken lightly. Nonetheless, where there is a compelling statewide interest at stake, such as the possibility for expanding affordable housing opportunities, the state can reasonably be expected to act to advance the welfare of its citizens despite the traditional deference accorded local government prerogatives.

The Virginia Housing Study Commission makes the following recommendations to provide for a more uniform framework for the local regulation of manufactured housing.

- The Commission recommends that the following new section be added to the *Code of Virginia*.

§15.1-486.3. Uniform regulations for manufactured housing.

A. It is the policy of this Commonwealth that the general health, safety and welfare of its citizens be promoted by assuring their access to a variety of safe, decent housing at an affordable cost. The General Assembly has determined that manufactured housing as defined in §36-85.3 provides households with an affordable option for decent, safe and sanitary permanent housing. The General Assembly further finds that since the adoption of the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 U.S.C. 5401 et seq.), significant improvements in the design, appearance, and structural performance of manufactured units makes them equivalent to conventional, site-built single family housing for the purposes of land use and existing structure regulations. Therefore, the General Assembly declares that it is the policy of this Commonwealth to provide an equitable basis for the local regulation of manufactured housing as defined in §36-85.3 and thereby provide broader options for the provision of safe, decent affordable housing.

B. Counties, cities and towns adopting and enforcing zoning ordinances under the provisions of this Article shall provide that in at least one class of agricultural zoning district, if any, the placement of double-wide manufactured housing, on a permanent foundation, on individual lots shall be permitted, subject to development standards that are equivalent to those applicable to conventional, site-built single family dwellings within the same or equivalent zoning district.

C. Counties, cities and towns adopting and enforcing zoning regulations under the provisions of this Article may, to provide for the general purposes of zoning ordinances, adopt uniform standards for roof pitch and overhang and for roofing and siding materials, so long as they apply to all residential structures erected within the zoning district incorporating such standards. Such standards shall not have the effect of excluding manufactured housing.

D. Local zoning ordinances adopting provisions consistent with this section shall not relieve lots or parcels from the obligations relating to manufactured housing units imposed by the terms of a restrictive covenant.

- The Commission also recommends that the regulation of manufactured housing in the Commonwealth be conducted by the Virginia Department of Housing and Community Development. A separate Manufactured Housing Board would be established, and the manufactured housing industry would create and capitalize a Recovery Fund to be administered by the Board. Manufactured housing in Virginia currently is regulated primarily by the Virginia Department of Motor Vehicles, which agency would retain responsibility for manufactured housing titling under the recommended reorganization.

- The Commission requests that the General Assembly memorialize Congress to revise the thermal standard requirements for the financing of newly constructed mobile homes to increase the potential of Farmers Home Administration financing.

- In 1990, the Commission will cooperate in convening a conference for mobile home manufacturers, dealers, and various lending institutions such as the Virginia Housing Development Authority, Veterans Administration, HUD, Farmers Home Administration, and private sources to improve understanding of the various types of financing available to assist low- and moderate-income individuals in the purchase of manufactured housing. With its participation in this conference, the Commission futher advocates that manufactured housing is an important affordable housing option for Virginians.

In his standard treatise, American Planning Law, *Norman Williams, Jr., described exclusionary land use controls as "those which interfere seriously with the availability of housing for low- and moderate-income people in areas where such housing is much needed."*

4. Exclusionary Land Use Controls and Inclusionary Remedies

The use of zoning necessarily requires that local governments discriminate among a variety of land uses, including specific uses in some districts while excluding others. Applied rationally, this process fosters communities offering diverse employment and housing opportunities to the extraordinarily diverse populations that characterize American society. Misused, zoning can become a tool for translating popular prejudices into a rigid pattern superimposed on the landscape.

Exclusionary Land Use Regulation

In his standard treatise, *American Planning Law*, Norman Williams, Jr., described exclusionary land use controls as "those which interfere seriously with the availability of housing for low- and moderate-income people in areas where such housing is much needed." In its current form, exclusionary zoning is not overtly directed at ethnic, racial, or other groups that have over the past three decades secured substantial protection from federal as well as state civil rights legislation and litigation. Federal and state court decisions during the latter half of this century have overturned overtly discriminatory ordinances affecting a variety of ethnic or racial minorities. However, localities continue to erect barriers that either intentionally or unconsciously operate to exclude households on the basis of income—often simultaneously excluding minorities that cannot be directly excluded by zoning.

Professor Williams notes that a specific zoning provision may or may not have significant exclusionary effects depending on community circumstances. If there is no unmet demand for low-income housing in a community or, more importantly, a region, then land use regulations that might be considered exclusionary in another context may be justified as well as perfectly permissible. A blanket condemnation of a specific regulatory technique, then, is generally inappropriate.

Whatever prejudices may be responsible for some exclusionary regulations, the fiscal realities facing many communities—particularly those experiencing rapid growth—provide an important rationale for their use. Given the heavy reliance necessarily placed on property tax revenues in Virginia localities, temptation exists to practice "fiscal zoning" with all its exclusionary potential. Fiscal zoning is the technique of zoning in "good ratables" (uses producing tax revenues but demanding little in direct public services) while zoning out "bad ratables" (uses producing relatively lower levels of revenues while generating demands for public services). Housing affordable for low- and moderate-income households is all too easily categorized as a "bad ratable."

Even communities with no overt desire to discriminate against or exclude persons on an economic basis may, nonetheless, find themselves doing so as a result of fiscal pressures. There are no real incentives for communities to do otherwise, particularly if other localities within a given housing market also exclude lower cost housing. Recent pressures on local governments to hold the line on real property taxes only add to the factors already arrayed against local regulations permitting rather then prohibiting affordable housing.

Various land use regulatory practices which are common features of local subdivision and zoning ordinances in Virginia can have exclusionary effects. A discussion of the effects of these practices follows.

Large Lot Zoning. The effect of requiring large lots within single family zoning districts is one of the most debated topics within the general area of exclusionary practices. Because land now typically accounts for as much as one-third of the cost of new single family dwellings, builders and many low-income housing advocates identify large lots as a primary factor inhibiting affordability. Rising costs for both raw and developed land have been portrayed as the principal factor inflating the cost of housing. Other commentators, including some vocal opponents of exclusionary land use practices, see the relationship between lot sizes and housing costs as somewhat more equivocal.

In areas experiencing development pressure, large lot zoning may foster sprawl development. Farmland is converted to low-density residential use, and the proportion of open space actually diminishes.

Two factors may be critical to determining whether lot size has an exclusionary impact. The first is the builder's response. If builders feel compelled to construct only larger and relatively more expensive units on a larger lot, then any increase in the size of a lot that results in a higher per lot cost may be amplified by the builder's decision to maintain a fixed ratio between lot cost and improvement cost. The second factor is the community's response. If a community within a market with a high demand for single family residential property zones its land exclusively or even extensively for densities that are substantially lower than surrounding jurisdictions, the effects on the regional market may well be exclusionary.

A given lot size is perhaps neither "large" nor exclusionary at all times and in all places. No designation of a lot of "X" size as constituting an exclusionary large lot is apt to fit the circumstances of hundreds of local governments, and the characteristics of the local residential market must be factored into any assessment of exclusionary zoning on the basis of lot size.

Large lot zoning is not without its ironies. It became popular as a growth management tool, but its consequences often contradicted its ostensible purpose. In rural areas with little development pressure, it may be a reasonable response to preserve open areas and agricultural or quasi-agricultural areas. And, given lower acreage costs in truly rural settings, what would be a "large" and possibly exclusionary lot on the urban/suburban fringe could be relatively affordable. But in areas experiencing development pressure, the technique may foster sprawl development. Farmland is converted to low-density residential use, and the proportion of open space actually diminishes.

Exclusion of Housing Alternatives. Local zoning may preclude alternatives to conventional single family developments in a number of ways. The simplest is to omit all residential uses except single family dwellings from the zoning ordinance. Alternative residential forms such as apartments, condominiums, manufactured housing units, accessory units, or shared housing arrangements may be omitted, defined out of potential existence, or permitted only by discretion (e.g., through special exceptions, conditional use permits, or similar devices) within designated districts. Even where the local ordinance acknowledges the existence of these housing alternatives, their paper existence may never be realized on the ground. Unless the governing body is willing to support comprehensive planning that designates areas for more intense residential uses, to rezone land in conformity with such a local plan, or rezone land upon the request of developers, affordable options will be effectively excluded.

Narrowly drawn definitions of terms like "dwelling unit," "household," and "family" can have a real impact on the possible use of one of the most obvious housing resources available to any community—existing units. Some housing experts believe that unauthorized conversions of existing units into accessory apartments and other actions that stretch existing units may be the de facto response to the widely perceived shortage of affordable units, and enforcement programs designed to ferret out unauthorized units may exacerbate such local shortages.

Reasonably broadened definitions of "household" and "family" could accommodate a variety of shared housing arrangements. Local zoning provisions that permit the use of accessory apartments subject to a reasonable set of conditions could encourage appropriate use of housing resources, lead to more equitable arrangements between landlords and tenants in such arrangements, and legalize situations that actually may be socially beneficial.

Excessive Lot Widths in Subdivisions. Those who refuse to condemn large lots as per se exclusionary devices point to other features of subdivision ordinances as having the capacity to increase prices to exclusionary levels. Norman Williams singled out excessive front footage requirements as being particularly suspect. Because street, curb, and other fixed facility costs may be determined and apportioned on a front footage basis, requiring extremely wide lots may translate directly into higher per unit costs as the developer recovers costs for required infrastructure.

Alternate subdivision designs that permit the same number of lots but require less front footage per lot could help. So could eased requirements for curbs and gutters as well as other infrastructure in areas with relatively low density that cannot justify urban facilities.

Other specific features of zoning ordinances may hamper affordability. Rigidly adhering to setback and design controls may inhibit the use of innovative design features with proven affordability characteristics. Allowing such features only upon the application of the developer for a special permit or variance does little to encourage their use.

Discretionary Zoning Controls. Increasingly, localities rely upon discretionary zoning controls. This trend reflects a heightened awareness of the limitations of the rigid application of traditional zoning, the growing complexity of land use issues, and the increasing sophistication of large scale development proposals.

Discretionary controls provide a more open framework for zoning decisions. General guidelines, performance standards, or criteria are mandated. Specific uses or design features may not be prescribed; instead, they may vary so long as they satisfy the general criteria. Each case presents a unique set of circumstances. Thus, requirements for local review and approval may give responsible local authorities considerable control over the final form of the project.

A number of techniques, including planned unit developments, conditional use permits, floating zones, conditional zoning, and incentive zoning, are generally included in most lists of discretionary controls. If traditional zoning can work for or against affordable housing, discretionary zoning has even greater potential for helping or hindering the provision of affordable units. Discretionary controls have the potential to reduce development costs. Density bonuses; unified review procedures; and provisions accommodating innovative designs incorporating clustering, zero lot lines, or other cost-reducing design features could all have positive effects on the overall cost of producing, selling, or renting housing. But these advantages can be nullified by protracted negotiations accompanying complex development proposals. And, if more extensive proffering results in excessive requirements, more rather than less expensive housing is apt to be the result.

The intention of the local authority controlling land use is decisive in the application of zoning to housing issues. If localities are serious about providing a regulatory environment that encourages responsible affordable housing proposals, most of the tools are already available. If affordable housing is subordinated to other goals, then discretionary controls may be the most effective exclusionary devices available.

Virginia Land Use Practices

Virginia localities have become increasingly sophisticated in their land use regulation. Recent legislation has broadened the powers of some of the most rapidly growing communities, and the effects of changes that have only begun to be incorporated in local ordinances remain to be seen. The 1989 Department of Housing and Community Development land use survey provides insight on zoning practices at this time of transition. Relevant findings relate to minimum lot sizes, provisions for multifamily housing, acceptability of alternative housing types, and use of "flexible" or discretionary zoning techniques.

Large lot zoning exists in Virginia. However, as noted above, the effect of large lots may or may not pose a serious threat to affordability. The jurisdictions responding to the survey reported an average minimum lot size of 3.63 acres in areas zoned for agricultural use. The largest minimums reported (up to 50 acres) tended to come from areas still largely rural in character or from counties or cities attempting to preserve some low density areas in the face of metropolitan, exurban, or second-home development pressure.

Minimum lot sizes were significantly smaller in residential zones in the reporting communities. Overall, the communities averaged about 14,000 square feet, with metropolitan areas averaging 7,255 and non-metropolitan areas 19,500 square feet respectively. And here, more so than in the case of agriculturally

While it may be argued that attempts to craft remedies for exclusionary land use regulations are futile, judicial and legislative bodies in some states have taken significant steps in that direction.

zoned areas, the larger lots tended to characterize genuinely rural counties. The ten localities with the highest minimums (ranging from two-thirds to two acres) were all rural.

Virginia localities differed substantially in their response to multifamily housing. Virtually all city ordinances contained provisions for owner- (condominium, attached town houses) or renter-occupied multifamily dwellings as permitted uses. Three-quarters of the counties permitted these uses by right within one or more districts. Non-metropolitan counties showed less interest in this form. Special use permits and conditional zoning were the more likely responses in those communities lacking outright provision for multifamily housing in their ordinances. Surprisingly, three-quarters of the responding jurisdictions claimed that vacant land with appropriate zoning for multifamily construction was available.

In terms of other housing options, under half of the responding communities accepted or had provisions for such alternative housing approaches as accessory apartments, "granny flats" (sometimes called "echo" housing), or shared housing. Cities and metropolitan counties proved more receptive to accessory apartments and shared housing arrangements, while counties and non-metro areas were more likely to accommodate granny flats or similar arrangements. These responses may reflect different housing conditions or norms prevailing in urban versus rural areas, as well as different attitudes toward extended families.

Finally, localities varied in their use of discretionary zoning techniques. While 71 percent of the respondents indicated local use of planned unit development or substantially similar zoning, only a third authorized the use of incentive zoning. A somewhat higher percentage of localities incorporate a mixed-use development approach. Speaking generally, all of these techniques were more likely to be encountered in cities than counties and in metropolitan versus non-metropolitan localities.

Inclusionary Remedies

While it may be argued that attempts to craft remedies for exclusionary land use regulations are futile, judicial and legislative bodies in some states have taken significant steps in that direction.

New Jersey. In *Mt. Laurel I and II [Southern Burlington County NAACP v. Township of Mt. Laurel,* 336 A.2d 713, cert. denied, 423 U.S. 808 (1975), 456 A.2d 390 (1983)], the New Jersey courts held that a township in the path of urban development could not so severely restrict its residential land uses as to deny housing to low-income persons. Basing their decisions on constitutional due process and equal protection arguments, the New Jersey courts stated that every municipality is required to bear its "fair share" of the "regional burden" of providing for such residential land uses.

The developing body of law exemplified by *Mt. Laurel I and II* and such other cases as *U.S. v. Black Jack,* 508 F. 2d 1179 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1974), in which the prohibition of multifamily housing by a St. Louis suburb was invalidated under Title VIII of the Civil Rights Act of 1968, was substantially limited by *Metropolitan Housing Development Corp. v. Arlington Heights,* 429 U.S. 252 (1977). In *Arlington Heights,* the Supreme Court did not follow the considerations of economic exclusion arguments of the New Jersey court in *Mt. Laurel.* Rather, the Court upheld the exclusionary zoning ordinance of a Chicago suburb on due process and equal protection grounds, but remanded the case for determination of Fair Housing issues. In turn, the Seventh Circuit held that, absent discriminatory intent, exclusionary zoning does not violate the U.S. Constitution. However, federal housing legislation may prohibit total exclusion of certain classes, and states remain free, as New Jersey held in *Mt. Laurel,* to strike down exclusionary practices based on a state constitution.

California. California adopted legislation requiring inclusionary housing under certain circumstances. Developers who provide a proportion of low- and moderate-income dwelling units are entitled to density bonuses

The Commission believes that housing costs should not be inflated by unreasonably burdensome fees and regulations, and that the types of housing should not limit the range of households that can be served in a community.

and exemption from park and recreation mandatory dedication requirements. Other legislation prohibits discriminatory actions against such affordable housing or governmentally assisted or subsidized units.

California also attempted to limit the impact of growth management on housing affordability. Ordinances directly limiting residential building permits or the creation of lots are presumed to have an impact on regional housing. Localities then must bear the burden of justifying their actions and produce documentation of their acceptance of a "fair share" of the region's housing needs.

Finally, the state's planning legislation requires a housing element in each locality's comprehensive plan. Aside from its analytical requirements, the housing element must also include a five-year program outlining the steps to be taken to assure that sites and services will be available to accommodate a wide variety of housing. In effect, California has attempted to codify the process laid down by the New Jersey courts in the *Mt. Laurel* fair share cases.

Oregon. California's northern neighbor adopted state legislation requiring local governments to adopt comprehensive plans and land use regulations complying with state goals. A state agency, the Land Conservation and Development Commission (LCDC), reviews these local plans and regulations for compliance. While much of Oregon's legislation is aimed at preserving rural land, localities are directed to adopt urban growth boundaries containing enough land to meet projected growth levels.

Oregon's approach has met with mixed results. While many commentators see the statutory framework as exemplary, its practical results have been much less impressive. The LCDC has relied on increased residential densities within the urban areas as the primary means for assuring a supply of affordable housing. However, when the LCDC attempted to enforce its authority by compelling a community to issue building permits, the Oregon Appellate Court ruled that the Commission lacked the authority to compel action by a locality. Absent specific legislative authority to use the remedy in question, and absent judicial recognition of any state constitutional issues related to the availability of affordable housing, the Oregon program may not have a significant impact.

Massachusetts. Massachusetts' well-known "anti-snob" statute has been the major legislative approach to exclusionary practices. The law mandates state agency review of local responses to a limited number of more affordable housing projects. Qualified applicants such as public housing agencies and nonprofit developers may submit an application for a subsidized low- or moderate-income housing project to a local zoning board. If the local board denies the permit, a state Housing Appeals Committee then reviews the denial and may reverse it. Factors considered in the administrative appeal include the local need for housing of the type contemplated and for reasonable health, safety, and welfare regulations. Local regulations must demonstrate equal treatment for subsidized as well as unsubsidized projects.

This approach has encouraged the development of some affordable housing, but its impact is limited to the types of properties subject to review by the Appeals Committee. More subtle exclusionary practices may continue to operate so long as they do not involve subsidized or assisted housing.

The Virginia Housing Study Commission is of the opinion that housing is affordable when those who live and work in a community have the opportunity to obtain safe, decent housing without undue financial burden and when home ownership is achievable for a broad range of households. The Commission believes that housing costs should not be inflated by unreasonably burdensome fees and regulations, and that the types of housing should not limit the range of households that can be served in a community.

Further, the Commission believes that, to attain these goals, zoning should not be exclusionary. The Commission suggests that zoning classifications should be identified in local zoning ordinances to provide for all classes of housing, including both site-built and manufactured structures. The Commission urges localities across the Commonwealth to

The Commission recommends that the Code of Virginia *be amended to include "affordable" housing as a subject to be studied by local planning commissions in their preparation of a comprehensive plan.*

encourage affordable housing opportunities, and to examine their comprehensive plans and zoning ordinances to ensure that such instruments promote affordable housing

The Housing Study Commission makes the following recommendations pursuant to land use and affordable housing in the Commonwealth:

- The Commission encourages the Virginia Housing Research Center to conduct a thorough review of exclusionary land use practices within selected Virginia housing markets as its first priority study. The 1989 Department of Housing and Community Development land use survey revealed some significant facts about local zoning practices. However, key commentators on exclusionary zoning note that a substantial analysis of not just ordinance provisions but also practices and the characteristics of the local and regional housing markets is essential.

  The Housing Research Center could provide a valuable source of information in this controversial area if it undertook such an analysis—particularly as it related to the major residential markets with the highest development costs. An analysis could be conducted to measure the impact of various local land use regulations and infrastructure development fees on the actual cost of new housing in four or five regions of the Commonwealth. Extensive case studies and interviews of the many parties involved in local development issues—local elected officials, planners, developers, homebuilders, and housing advocacy groups—could lead to new insights into resolving the potential conflicts over housing development proposals.

- The Commission recommends that §15.1-447 of the *Code of Virginia* be amended to include "affordable" housing as a subject to be studied by local planning commissions in their preparation of a comprehensive plan. More specifically, the amended Code section would read as follows:

  Section 15.1-447. Surveys and studies to be made in preparation of plan; implementation of plan. - (1) In the preparation of a comprehensive plan, the local commission shall survey and study such matters as the following: (a) Use of land, preservation of agricultural and forestal land, production of food and fiber, characteristics and conditions of existing development, trends of growth or changes, natural resources, groundwater, surface water, geologic factors, population factors, employment and economic factors, existing public facilities, drainage, flood control and flood damage prevention measures, transportation facilities, the need for affordable housing, and any other matters relating to the subject matter and general purposes of the comprehensive plan...

Housing the Elderly and Disabled

The Virginia Housing Study Commission in 1989 examined a number of housing issues affecting elderly and disabled Virginians. The Commission continued its analysis of the complex independent living eligibility issue, took an initial look at identifying a threshold for licensure of congregate facilities, identified several Virginia Housing Partnership Fund Emergency Home Repair Program improvements, and agreed on additional areas for study in 1990. Commission recommendations follow.

1. Independent Living Eligibility

The population of elderly Virginians is increasing at a rate far more rapid than that of the Commonwealth's overall population. As the Virginia Housing Study Commission noted in its 1988 Annual Report, in the decade of the 1970s, the number of Virginians 60 years of age and older increased by 49.6 percent, while the overall population increased by 14.4 percent. Further, the U.S. Census Bureau projects that the number of persons aged 75 to 80 will increase by 60 percent over the next 30 years.

The Virginia Residential Landlord and Tenant Act, discussed earlier in this report, is silent on the subject of determining whether a tenant is capable of independent living, or whether support services found in a more structured living environment are more appropriate or necessary for that tenant's health, safety, and welfare. Absent such guidelines, landlords and tenants often lack an understanding of what to expect and how to proceed in situations where the eligibility — short- or long-term — of a tenant to live independently is questionable.

Under present law, the only means of resolution is action by the landlord through the courts to have the tenant evicted. While situations which cannot be informally resolved are the exception rather than the rule, they nevertheless pose serious problems for landlords and tenants alike.

Given that the number of elderly Virginians is increasing dramatically, there will likely be a corresponding increase in situations in which the independence of elderly tenants is questionable. The independent living issue may arise, as well, in situations in which the tenant is disabled, or suffers from a degenerative condition.

The Virginia Housing Study Commission discussed possible amendments to the Landlord and Tenant Act to provide guidelines for nonlitigated resolution of independent living status disputes. The Commission agreed on the need for such guidelines, as well as on the need for additional study regarding the appropriate provisions and language of such amendments. Therefore, the Commission Subcommittee on Housing for Elderly and Disabled Virginians will continue its analysis of this issue in 1990, with the intent of recommending legislative guidelines for nonlitigated dispute resolution and reviewing strategies to encourage such resolution.

2. Licensure Threshold

Currently, state law and regulations governing adult home licensure are based on an institutional model of service provision which does not adequately provide for noninstitutional congregate care residential facilities. Confusion and disagreement over the threshold for licensure/non-licensure is a disincentive for owners of residential facilities serving elderly households to address the service needs of their residents. The Housing Study Commission believes that a clear distinction should be made in state law and regulations between the "care and maintenance" of persons and the promotion of independence and self-sufficiency. Such distinction could be the basis for establishing the threshold for licensure/non-licensure of facilities.

At the request of the Commission, its Subcommittee on Housing for Elderly and Disabled Virginians will make the continuum of care a priority for study in 1990. Pending possible legislative changes, the Commission encourages the Department of Social Services to work with the subcommittee in delineating

A clear distinction should be made in state law and regulations between the "care and maintenance" of persons and the promotion of independence and self-sufficiency.

facilities subject to licensure under current state law, and urges that the Department not be overly aggressive in subjecting facilities to licensure.

3. Emergency Home Repair Program

The Virginia Housing Study Commission recommends that the Department of Housing and Community Development make the following changes pursuant to the Emergency Home Repair Program of the Virginia Housing Partnership Fund:

- Expand eligible program activities to include installation of such nonemergency safety improvements as grab bars, ramps, and door latches.
- Increase the per unit grant limit from $500 to $1,000 to enable the completion of emergency repairs as well as nonemergency safety improvements.
- Increase the allocation of program funding from $250,000 to $750,000 through reallocation of Virginia Housing Partnership loan monies to accommodate the recommended higher per unit grant limit.
- Amend program matching fund requirements to allow a single 50 percent match to be made on the entire grant amount. (Currently, program guidelines require a 50 percent match on a unit-by-unit basis.)

In 1990, the Virginia Housing Study Commission will also study or monitor the following issues:

- Zoning for group homes and congregate facilities which does not restrict elderly and disabled residents to such non-residential settings as industrial zones
- The need for group homes, shared housing, and congregate housing opportunities
- Tax relief for elderly homeowners, a subject currently under review by a Virginia House Finance Special Subcommittee.

Housing Finance

In 1989, the Virginia Housing Study Commission examined a number of financial programs and strategies with potential to foster the preservation and production of affordable housing for residents of the Commonwealth. With decreased federal revenues and the significant housing commitment of the Commonwealth through its Virginia Housing Partnership Fund and the Virginia Housing Development Authority Housing Fund, the Commission focused on creative initiatives which appropriately could be implemented by the private sector. Following are Commission recommendations on employer-assisted housing and down payment assistance programs, as well as myriad additional suggestions for financing affordable housing.

1. Employer-Assisted Housing

Shortfalls in the supply of affordable housing have obvious consequences for moderate-income households, but the high cost of housing can also hurt businesses and communities. Both public and private employers may encounter difficulties in attempting to hire new employees or relocate current employees to communities with relatively high housing costs. Should the direct and indirect expenses resulting from high housing costs become too burdensome, companies may direct expansion to other communities with less expensive housing or relocate the business. In recent years major corporations have left the metropolitan New York area in part because of the impact of housing costs on employees. The reluctance of current employees and new hires to relocate to portions of the Northeast and California has also been cited as a factor threatening the continued economic growth and prosperity of those areas.

Higher-cost areas of the Commonwealth are not immune from similar concerns. Recent newspaper accounts from northern Virginia suggest that the inflation in housing costs is hindering efforts to recruit skilled personnel for many middle and upper echelon positions in both the private and public sectors. The difficulties lower income workers have encountered are also well-documented, and include an increase in the number of gainfully employed, homeless individuals in northern Virginia. Local economic development officials are increasingly worried about the ultimate impact of higher costs on the continued development of the regional economy.

Recently, there has been a flurry of interest in proposals aimed at encouraging employers to participate more extensively in the provision of affordable housing. With the exception of the company town, however, American business has traditionally espoused a hands-off attitude toward employee housing. Housing has been a commodity for which employees were alone responsible. Now reality may belie the conventional wisdom.

For a number of reasons, employers now provide a surprisingly wide array of housing-related services with a total cost estimated by some to reach $20 billion annually in forms that have become commonplace in corporate America: relocation assistance for transferring employees or new hires, compensatory payments for relocations to higher housing cost areas or for losses incurred on required sales in depressed markets, and mortgage interest differentials. Many of these programs were originally intended to benefit only upper echelon corporate personnel. But some companies have offered broader packages or embarked on more innovative programs, including mortgage guarantees, down payment assistance, mortgage "buydowns," and other approaches. Although many Virginia employers do use some of the more commonplace techniques for cushioning the impact of employee relocations, most sources indicate that they have not attempted any of the more innovative approaches now appearing in the urban Northeast.

Aside from recent extensive efforts to publicize the significant existing and potential roles for corporate interests in supporting affordable housing initiatives, advocates for

more business involvement have made several specific proposals. Businesses can elect to do more on their own, but changes in government policies could encourage both more widespread and effective participation by corporate America.

Most of these proposals have been directed toward the federal rather than state level of government because the federal tax code and other regulations play a much more decisive role in shaping corporate decision-making. Specific proposals for federal action have included the following:

- Revise federal laws defining and regulating personnel benefits to authorize corporate housing benefits as permissible activities.
- Categorize housing assistance programs as tax-advantaged personnel benefits in flexible or so-called cafeteria style benefit programs. If workers could select housing as one of many alternative benefits (e.g., trading housing off against insurance, pension, education, or deferred income benefits), with an overall limitation on exemptions from federal taxation there would be no net cost to the federal government and employees could tailor their benefits to their current needs.
- Grant specific authorization for corporations to start employer-assisted housing ownership programs (called EHOPs by their advocates) on the same tax-advantaged basis as employee stock ownership plans (ESOPs). Employers would donate (or borrow and donate) funds to a trust for the purpose of making mortgage loans, down payment loans, or grants to employees. The donations received by employees would be tax-exempt and the donations would be deductible expenses for the company.
- Include funds in federal housing legislation to support a national employer-assisted housing demonstration project, assisting state and local efforts to support employers contributing to housing programs.
- Revise the tax code to permit employees to make a one-time, tax-free withdrawal from certain specific benefit plans (such as retirement plans) for the purpose of making a down payment on a primary residence. Recapture provisions could be included to assure that at the time the dwelling is sold the federal treasury recovers any foregone revenues.

Recommendations relevant to state level programs and policies generally suggest financial incentives to encourage greater voluntary participation by employers.

The characteristic diversity of American business suggests the likelihood that no single approach to employer-assisted housing would be appropriate in all circumstances, but employers could choose to participate in a variety of ways. Some initiatives could be facilitated by state agencies; others could be accomplished with little or no direct government participation. A few examples of possible strategies are listed below.

- Employers could purchase taxable housing bonds from a state or local housing finance agency. Proceeds from the bond sale would be used to lend to employees at below market rates, with an emphasis on benefitting low- and moderate-income employees of the initiating company.
- Employers could ease the currently critical down payment squeeze on employees by joining with housing finance agencies in offering mortgage insurance to employees, thereby reducing the dollar amount of the required down payment.
- States could assist in assembling packages of down payment loans created by employers for purchase by investors.
- Employers could facilitate new construction through a number of different steps. They could serve as coinvestors on new projects, negotiate sales price concessions from developers where their employees present a large potential market for new housing, or they could provide developers with a guarantee of future sales by serving as a purchaser of last resort.

To date no state has set aside funds specifically for these purposes. The lower house of the New Jersey General Assembly has passed a bill creating an "Employer Assisted Community Housing Fund." The bill remains under consideration in the state senate. If the bill is

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enacted and signed into law, it would provide a matching fund (one state dollar for every three corporate dollars of assistance) to be offered in either a grant or loan form to employers who offer housing assistance as an employee benefit. Preference would be given to employer programs that create additional new affordable housing units.

State housing finance agencies (HFAs) could also play a supportive role, according to some commentators. A few employers (the University of Pennsylvania is a notable example) have established their own mortgage guarantee programs. However, because these mortgages carry neither conventional private nor federally backed mortgage insurance, there is no secondary market for them. Thus, lenders must retain these loans in their portfolios. This lack of liquidity may discourage potential lenders from considering such mortgages. If HFAs were authorized to purchase employer-insured mortgages using proceeds from their reserve funds or from the sale of taxable HFA bonds, more employers and even conventional lenders might be willing to experiment with this approach.

The Virginia Housing Study Commission believes that the concept of employer-assisted housing has enormous potential to foster housing affordability in the Commonwealth, and makes the following recommendations.

- The Commission encourage the Virginia Housing Development Authority to consider the feasibility of issuing taxable bonds to be used to purchase packages of employer-insured mortgages. The package could include a mix of low- and moderate-income mortgages as well as more expensive properties.
- The Commission encourages the Department of Housing and Community Development and the Virginia Housing Development Authority to monitor developments in the area of employer-assisted housing, and report to the Commission on such programs in 1990.
- In addition, the Commission will examine the opportunities and options for encouraging more effective employer-assisted housing activities within Virginia, including the possible roles the Commonwealth might play in assisting its employees.
- The Commission recommends the appointment of a blue-ribbon commission, to include appropriate representation by major Virginia employers, to study and facilitate employer-assisted housing programs in the Commonwealth.
- The Commission recommends that a statewide conference on employer-assisted housing be convened to demonstrate the need for such housing, various approaches to providing such assistance, and the importance of educating employers on the cost efficiency of such programs. The Commission, the Department of Housing and Community Development, and the Virginia Housing Development Authority could work together in convening the conference.
- The Commission will request that the Governor host a roundtable discussion at the Governor's Conference on Housing. The roundtable would include top representatives of trade associations, university presidents, and chief executive officers of major Virginia corporations.

2. Down Payment Assistance

For most Americans a home is the largest single investment of a lifetime. Home ownership has both substantial and symbolic importance in our culture. It conveys many tangible and intangible benefits, not the least of which is the financial security blanket provided by accumulated home equity available in an emergency or to provide the basis for a comfortable retirement.

Nationally, however, home ownership rates have been declining throughout most of this decade. Down payment burdens have retreated somewhat from the highs reached in 1980-82 after a fifteen year climb, but they still remain well above the levels prevailing before 1976.

The effect of rising housing prices on down payment burdens is mirrored by the number of renter households in the group aged from 25 to 34. The Harvard-MIT Joint Center for Housing Studies used data from the Federal Reserve Board's 1986 Survey of Consumer Finance to gauge the impact of rising costs on households in this category. Over 81 percent of these households lacked the accumulated wealth needed to make the down payment required for a typical starter home. This factor impeded substantially more potential home buyers than did the requirement for an income sufficient to make monthly mortgage payments on the same typical dwelling.

Affordability — determined primarily by interest rates, income, and sales prices — remains a serious concern in Virginia. According to the index calculated by the Virginia Real Estate Research Center, affordability began a downward trend early in 1988, reversing a general increase in affordability that had prevailed from the second quarter of 1985 through the fourth quarter of 1987. The relative erosion in affordability characterized not only such traditionally high cost markets as Charlottesville, northern Virginia, and portions of Tidewater, but also the typically less costly housing markets in the state's smaller, less economically dynamic metropolitan areas.

At the close of 1988, five of the ten market areas covered by the Center's report posted indices indicating that fewer than 50 percent of the households in those communities could afford to purchase the typical single family dwelling. The lowest affordability rankings appeared in the state's largest real estate markets, compounding the problem. With the inclusion of the Richmond market, well over half of the state's population resided in areas with serious or imminent affordability problems.

In some markets the high level of demand for new and existing homes and the consequent escalation in the market price for dwellings has reinforced this affordability trend. Where rising prices have outstripped increases in median family income, the outcome is a loss of affordability, with a far more serious impact on potential first-time home buyers. Unlike the owners of existing homes who wish to trade up and who may tap existing home equity, first-time buyers gain no benefit from the general appreciation of housing. Individuals facing these or similar circumstances would benefit most from a down payment assistance program.

At the federal level, recognition of the existence of the down payment barrier has led to several proposals for permitting the tax-deferred treatment of savings used for first time home purchases. Home buyers would be permitted to invest IRA, 401(k), or other self-funded benefit plan funds in the purchase of a home. Opponents of this approach question the potential effect on the federal deficit as well as the probable effectiveness and equity of such a scheme.

Recognizing the special problems besetting first-time home purchasers, particularly those with moderate incomes, several states have inaugurated down payment assistance programs that supplement other state or even federal housing programs. These programs have generally taken one of two forms. Some target low- or moderate-income households; others have no per se income restrictions for applicants. Straight-out loans, low- or no-interest deferred loans, and lease/purchase arrangements have all been tried. Following are summaries of several state programs.

For most Americans a home is the largest single investment of a lifetime. Nationally, however, home ownership rates have been declining throughout most of this decade.

New Jersey. A local program begun in Wilmington, Delaware, in 1983 and later emulated by local nonprofit development agencies in Charleston, West Virginia, and Columbus, Ohio, served as the model for the New Jersey lease/purchase program. In the New Jersey version, prospective home owners are offered both low-interest mortgages and the means to save the money required for a down payment. The potential purchaser rents a unit in a participating project for a specific term, and the rental agreement includes an option to purchase the unit upon the expiration of the lease. A portion of each month's rent is placed in an escrow account held in the name of the prospective owner. Both the escrowed funds and a portion of the interest they earn may be applied as down payment.

Tax-exempt financing was the key to the success of the New Jersey projects. The city of New Brunswick used tax exempt bonds to build town homes for one phase of the program. In addition, the city granted a 50 percent tax abatement to one project, bringing the carrying costs of the units down still further. The city used the same approach with both new construction and rehabilitation projects.

Two-thirds of the units employed conventional mortgage financing. In a typical case, most of an $850/month payment was set aside toward the down payment. At the conclusion of the lease most of the required $10,500 down payment had been accrued. Had the purchaser paid rent at that level while attempting to set aside funds for an adequate down payment, the purchase of an existing or new home would have been indefinitely delayed.

New Brunswick placed no income limits on the availability of most of the lease/purchase units. Not surprisingly, however, the units were in such demand that a lottery was required to select program applicants. In one instance, where 75 of the 102 available units were reserved for city employees, over 1,000 persons sought the remaining 27 units. The city has used covenants to assure that program participants actually occupy the units, preventing owners from turning them into speculative rental property. While the city has not prevented buyers from selling the units at prevailing market rates and capitalizing on the instant equity, that equity has in at least half the cases then been used for a down payment on other conventionally financed residential properties.

One-third of the units were set aside as affordable housing for households at the low end of the moderate income range. The New Jersey Housing and Mortgage Finance Agency used funds from a pre-1986 tax-exempt bond issue to bring the cost of these units down still further. Unlike the other program participants, these lower-income prospective purchasers would have access to mortgages at 8.25 percent, ensuring not only that the down payment, but also the continuing financial burden of home ownership, remained within their means.

The New Jersey HFA also recently instituted a different program designed to aid low-income home buyers participating in the state's Mt. Laurel low-cost housing program. This program more closely resembles the down payment loan approach taken by several other states. The $250,000 trial program provides 100 qualified applicants $2,500 toward the down payment. The loans carry no interest and are not liable for repayment until the property is sold.

Minnesota. State appropriations provide the basis for the Homeownership Assistance Fund (HAF), the oldest down payment assistance program in the country. Since 1977 Minnesota has committed more than $15 million in general funds to support the program, and it has benefitted over 4,000 home owners. Borrowers qualifying for Minnesota Housing Finance Agency loans who cannot meet conventional mortgage lenders' standards for down payments are eligible for up to $1,500 in no-interest loans, and the borrower is not obligated to repay the HAF until the home is resold.

The HAF program has helped the Minnesota HFA improve its targeting of housing program beneficiaries — an increasingly important concern as the operations of all state HFAs come under increased scrutiny in connection with the impending sunset of single family mortgage revenue bonds. By reaching down to lower-income levels in the pool of applicants, HFAs can present a stronger case for continuing their authority to issue tax advantaged housing bonds.

The Virginia Housing Study Commission recommends that the General Assembly allocate funding for a demonstration down payment assistance program.

The Minnesota Housing Finance Agency estimated that in 1988, use of the Housing Assistance Fund (which incorporates monthly mortgage assistance) approach could lower the annual income required to qualify for an "average" mortgage of $55,850 from the $26,880 required for a conventional loan to $20,820. When this is combined with a $1,500 down payment loan, the possibility of home ownership is extended to substantially more Minnesotans.

Connecticut. Like Minnesota, Connecticut elected to link its down payment assistance to loans made by its state housing finance agency, the Connecticut Housing Finance Authority (CTHFA). In one instance, Connecticut's Pilot Single Family Construction Loan Program, which provides below-market interest construction financing to both for-profit and nonprofit builders, also authorizes down payment assistance in the form of a repayable second mortgage for first-time home buyers with incomes below $20,000.

Since 1979, the Connecticut Department of Housing has administered a Downpayment Assistance Program providing low-interest (six percent at the present time) second mortgages linked to CTHFA first mortgage loans. Effectively limited to first-time home buyers meeting income requirements set by the Department of Housing, the program authorizes loans of up to 25 percent of the total cost (including closing costs) associated with the purchase. The program was designed to fill the gap between the FHA insurance ceiling and the CTHFA sales price ceiling.

General obligation bonds provide the financial basis for the program. Total program funding for FY 87-88 reached $10 million. Through 1986, approximately 1,773 home buyers had received loans averaging $9,800 for a cumulative program total of almost $17.4 million. By 1989, over 3,800 households had participated in the program and the average loan had reached $16,000. The delinquency rate for the program recently stood at 3.96 percent, which compares reasonably well with the 3 percent deliquency rate experienced by the nationwide conventional mortgage market and improves on the record of FHA and the CTHFA delinquency rate of approximately 5.5 percent.

Maryland. In 1988 the Maryland General Assembly authorized the addition of a new program to its existing array of state housing assistance. In addition to an appropriation of $1 million, the legislature granted additional statutory powers to the Maryland Department of Housing and Community Development authorizing the Department to issue program regulations for a closing cost assistance program. Like down payment assistance programs, the new Maryland effort effectively targets first-time home purchasers. In 1989, the legislature supplemented its initial appropriation with an additional $1 million.

The Maryland program does not require participants to obtain a Maryland Housing Fund first mortgage, though over 90 percent of the current loans are associated with HFA financing. The income limitations for the closing cost fund are the same as those for Maryland Housing Fund applicants, and therefore the bulk of prospective clients are likely to come from the same applicant pool.

Borrowers have to demonstrate the lack of sufficient cash resources to cover closing costs and must contribute a specified minimum amount of their own funds. A sliding scale based on income determines the borrowers' actual cash contribution. Households with incomes below $25,000 may borrow funds to cover closing costs at a current four percent interest rate; those with incomes above $25,000 and below the current HFA ceiling of $35,275 must pay eight percent. Borrowers must repay the fund on either a five or ten year amortization schedule. To date some 200 households have sought assistance from the fund. Over 100 loans have actually been processed and nearly $400,000 in program funds expended. The typical loan has been in the range of $2,800 to $3,000.

A program of this nature, in which the Commonwealth would commit a limited amount of funding that would leverage other substantive funding for home ownership opportunities, could serve to demonstrate the significance of assisting Virginia residents to overcome the prime barrier to home ownership and the benefits that accrue from that opportunity.

California. The California Home Ownership Assistance Program (CHAP), originally used to help low-income purchasers of manufactured housing or rental units undergoing condominium conversion, uses a combination of an ordinary mortgage loan and a second, shared appreciation loan. The first loan is made in accordance with ordinary underwriting standards, but might cover as little as 46 percent of the cost of the unit. The second loan could cover up to 49 percent of the purchase price.

The borrower makes periodic payments on the principal of the loan but does not pay interest in the conventional sense on the second loan. The borrower is obligated upon sale to repay the entire loan plus a share of accrued equity equal to the state's original share in the property. Thus, if the state CHAP loan covered twenty percent of the cost of acquisition, upon sale the state would receive twenty percent of property's appreciation plus the amount it originally lent.

Borrowers seeking CHAP loans must apply to participating lenders for the maximum amount for which they can qualify. Borrowers must make a five percent down payment and must agree to commit 35 percent of their gross income to monthly housing costs. The state then lends borrowers the difference between the purchase price and the total of the down payment and the primary loan. The state's loan wraps around the original loan from the primary lender, enabling the lender to service both the primary and CHAP loan as a single package.

Down payment assistance strategies have generally been a response to severe affordability problems. The Connecticut and Minnesota programs have long track records. Their success rests on a careful screening of applicants and the repayment methods. In a generally rising housing market, Minnesota's "soft seconds" provide reasonable assurance against loss in case of default. The Minnesota HFA's exposure is very limited on each loan, and the program offers the HFA considerable benefits by enabling them to improve their targeting of households. The Connecticut Department of Housing is substantially more exposed to loss in case of default, but the program's experience over a decade suggests that so long as housing values continue to rise, or at least do not fall back, the risk is reasonable.

The New Jersey program is somewhat more experimental, but, on the basis of demand for units in the lease/purchase experiment, it too seems successful. One desirable feature of this approach is the time delay between the initial lease and the decision to purchase. Should economic circumstances change, neither the lender nor the would-be home owner is obligated to follow through on the unit purchase.

The Virginia Housing Study Commission recommends that the General Assembly allocate funding for a demonstration down payment assistance program. The program, to be administered by the Department of Housing and Community Development, could be implemented within the context of the Virginia Housing Partnership Fund. Program approaches could include deferred payments, shared equity loans, and matching funding. A program of this nature, in which the Commonwealth would commit a limited amount of funding that would leverage other substantive funding for home ownership opportunities, could serve to demonstrate the significance of assisting Virginia residents to overcome the prime barrier to home ownership and the benefits that accrue from that opportunity.

3. Private Activity Bonds

Recently enacted federal legislation provides for an extension of the sunset date for single family housing as an eligible use of tax-exempt private activity bond authority through September 30, 1990. State private activity bond legislation was developed to comply with previous federal law, under which authority to use tax-exempt bond financing for single family housing development terminated after December 31, 1988. The Virginia General Assembly will need to amend state private activity bond legislation to comply with new federal tax law if single family mortgage bond issuance is to continue during 1990.

Therefore, the Virginia Housing Study Commission recommends the adoption of legislation to amend §15.1-1399.13 of the *Code of Virginia* to enable the Commonwealth to continue issuance of private activity bonds for single family housing and/or manufacturing facilities in accordance with federal law through the extended sunset date of September 30, 1990. The legislation is recommended for emergency status so that single family bond issuance can begin as early as possible during 1990, rather than July 1, 1990.

4. Other Recommendations

The Virginia Housing Study Commission makes the following recommendations related to the financing of affordable housing.

- The Commission recommends that the Virginia Bankers Association and the Virginia Mortgage Bankers Association act expeditiously in developing a fund to finance assistance for preserving and producing affordable housing.
- The Commission recommends that the Department of Housing and Community Development and Virginia Housing Development Authority, in cooperation with the Commission, convene a work session designed to provide for financial institutions information on the key role tax credits can play in preserving and producing affordable housing. The session would stress the importance of chief officers of financial institutions advising middle management at local branches of the role financiers can play in ensuring affordable housing for Virginians.
- The Commission recommends that the Department of Housing and Community Development and Virginia Housing Development Authority design and implement a demonstration program in which developers, localities, financial institutions, state agencies, attorneys, real estate agents, and other pertinent players would participate in lowering the cost of first-time home ownership.
- The Commission recommends that the Virginia Department of Social Services accept applications for Neighborhood Assistance Act tax credits on an open basis. The Department currently accepts applications twice annually, and an open application policy would provide additional program flexibility.
- The Commission recommends the creation of a program whereby landlords would receive Virginia income tax credits in return for rent discounts to low-income elderly and disabled tenants. The program would foster the provision of affordable housing to those special user groups with the greatest need for such housing.
- The Commission recommends that the General Assembly support the increased budget request of Virginia Water Project and the Virginia Department of Housing and Community Development.
- The Commission recommends that the General Assembly allocate funding for nonprofit organizations that assist in the implementation of the Virginia Housing Partnership Fund.
- The Commission recommends that the remaining monies in the Exxon oil overcharge fund (approximately $8 - $10 million) be allocated for housing weatherization programs.

The Commission recommends that the Department of Housing and Community Development and Virginia Housing Development Authority design and implement a demonstration program in which developers, localities, financial institutions, state agencies, attorneys, real estate agents, and other pertinent players would participate in lowering the cost of first-time home ownership.

- The Commission recommends that the General Assembly allocate $11.225 million, the sum requested by the Virginia Coalition for the Homeless, for homelessness prevention and assistance programs. An allocation at this level would be used to maintain present service capacity, and expand bed capacity and intervention programs.
- In 1990, the Housing Study Commission will invite the Governor to participate in convening a meeting of the financial institutions of the Commonwealth to explore how those institutions could better meet their Community Reinvestment Act (CRA) local objectives and participate in meeting the needs for low-income housing.

Housing Secretariat

The Virginia Housing Study Commission recommends that the Governor establish a Secretariat for Housing. The Commonwealth's housing agencies currently are positioned within the Secretariat for Economic Development. The Commission believes that the magnitude and diversity of Virginia's housing needs, both from a social and an economic perspective, continue to pose a challenge to the Commonwealth which merits the establishment of this new position.

Given the overwhelming body of testimony received at its 1989 public hearings and the results of staff's issue analysis, the Virginia Housing Study Commission believes that it is neither feasible nor desirable to permit localities to enact fire prevention regulations and building requirements more strict than those allowed under the Uniform Statewide Building Code.

Senate Joint Resolution 190: Fire Prevention Safety

Senate Joint Resolution 190, passed by the 1989 General Assembly of Virginia, directed the Virginia Housing Study Commission to study the feasibility of allowing localities to enact fire prevention regulations and building requirements more strict than those allowed under the Virginia Uniform Statewide Building Code. More specifically, the Commission was directed to determine whether more strict regulations and building requirements should be limited to hotels, motels, boarding houses, multiple family dwellings having more than two dwelling units, dormitories, and other similar buildings. The Resolution directed the Commission to submit its findings to the Governor and 1990 Virginia General Assembly.

In response to SJR 190 and as part of its 1989 study agenda, the Virginia Housing Study Commission convened four regional public hearings to receive testimony on its 1989 study issues. A fifth public hearing, convened in Richmond, was designed specifically for the Commission to receive testimony on SJR 190. However, the Commission indicated its willingness to receive testimony on SJR 190 at each of its five hearings.

The Virginia Uniform Statewide Building Code was enacted at the recommendation of the Housing Study Commission by the 1973 Virginia General Assembly. Section 36-99 of the *Code of Virginia* mandates "building regulations to be complied with in the construction of buildings and structures...[and] regulations to insure that such regulations are properly maintained... [and] procedures for the administration and enforcement of such regulations." Section 36-99 of the *Code* also provides that the Building Code provisions "shall...protect the health, safety, and welfare of the residents of this Commonwealth, provided that buildings and structures be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation, water conservation and barrier-free provisions for the physically handicapped and aged."

Section 36-98 of the *Code* mandates that the Board of Housing and Community Development adopt and promulgate the Building Code, and that, in formulating Code provisions, the Board "shall have due regard for generally recognized standards as recommended by nationally recognized organizations, including, but not limited to...the National Fire Protection Association."

In recommending the adoption of a Uniform Building Code for Virginia, the 1971 Housing Study Commission noted that "among the factors contributing to the high cost of construction today are various laws, ordinances, rules, regulations and codes regulating the use of materials and construction of buildings." The Commission 1971 Annual Report stated that "many such requirements rigidly enforce the use of products better suited for a century ago [and] ignore...discoveries, inventions, and improvements..." The Report noted that "there is little logic and less consistency to [the myriad requirements...] They differ more than they agree, and as a result innovation is thwarted, inferior products are used and time-consuming techniques are employed at the cost of quality and efficiency... In addition to constituting a barrier to major production, differences and excesses in local codes add substantially to the cost of residential production."

The Housing Study Commission received testimony from twenty individuals representing such organizations and associations as the Virginia Department of Fire Programs, the State Fire Chiefs Association, the Apartment and Office Building Association of Metropolitan Washington, the Industrialized Housing Association of Virginia, the Virginia Building and Code Officials Association, the Virginia Hospitality and Travel Association, the Home Builders Association of Virginia, the Consulting Engineers Council of Virginia, the Virginia Electrical Contractors Association, the Virginia Retail Merchants Association, the Virginia Municipal League, and the Virginia Association of Counties. Except for the State Fire Chiefs Association and the Virginia Municipal League,

the testimony of these organizations strongly urged that the current Uniform Statewide Building Code system remain intact, and that localities not be permitted to mandate building and fire safety regulations more strict than those permitted under the Code.

Given the overwhelming body of testimony received at its 1989 public hearings and the results of staff's issue analysis, the Virginia Housing Study Commission believes that it is neither feasible nor desirable to permit localities to enact fire prevention regulations and building requirements more strict than those allowed under the Uniform Statewide Building Code.

Conclusion

Since 1987, Virginia has come to be recognized as a national leader in the arena of housing. State funding for housing increased from some $400,000 in 1986 to over $49 million in the 1988-90 biennium, and that funding has leveraged nearly $120 million in other financing from the public and private sectors.

The Virginia Housing Partnership Fund, created by the 1988 Virginia General Assembly at the recommendation of the Virginia Housing Study Commission, is at work throughout the Commonwealth. The Fund, administered in a partnership effort by the Virginia Department of Housing and Community Development and the Virginia Housing Development Authority, was conceived as a low-interest revolving loan and grant program, with a biennial appropriation of $47.5 million for a ten-year period, commencing in 1988. Program areas include single family and multifamily production and rehabilitation, emergency home repair, congregate housing, shelters for the homeless and homelessness prevention, and operating support for fledgling nonprofit housing organizations.

Given the outstanding record of achievement of the Housing Partnership Fund, the demonstrated level of need that far exceeds its available resources, and the continuing housing challenges that face the Commonwealth, the Virginia Housing Study Commission recommends full funding for the Housing Partnership Fund in 1990-92.

The Virginia Housing Study Commission takes pleasure in presenting its 1989 recommendations designed to build on the Partnership Fund and other major Commission initiatives approved and implemented since its 1987 reactivation. The Commission recognizes impending fiscal limitations facing the Commonwealth, but believes that safe and decent affordable housing for all residents is a critical factor in ensuring a vital Virginia economy. The Commission is optomistic that its 1989 recommendations will help to guide the Commonwealth in that important direction.

Virginia Housing Study Commission 1989 Subcommittees

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