Virginia Housing Study Commission

1991 Annual Report to The Governor
and The General Assembly of Virginia

A Third Decade of Leadership

VIRGINIA HOUSING STUDY COMMISSION

General Assembly of Virginia

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Chairman
Virginia House of Delegates
94th Legislative District

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

The Honorable James F. Almand
Virginia House of Delegates
47th Legislative District

The Honorable Daniel W. Bird, Jr.
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61st Legislative District

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INTRODUCTION

Commission Chairman
Alan A. Diamonstein

The publication of the 1991 Virginia Housing Study Commission Annual Report marks the transit of the Commission into its third decade of leadership. Established by the 1970 Virginia General Assembly, the Commission was originally mandated "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 was further directed to determine if Virginia laws "are adequate to meet the present and future needs of all income levels" in Virginia, and to recommend appropriate legislation to ensure that such needs are met. Delegate Alan A. Diamonstein (D-Newport News) has served as the Commission's Chairman since soon after its establishment.

Increasingly, the Commission has come to be recognized as a forum for new ideas in Virginia housing, and as a focal point for helping to develop consensus for such ideas. Nationally, the Commission is one of only a few such bodies that work closely with the public and private sectors and nonprofit organizations to develop workable solutions to housing problems, and advocate within state government for their implementation.

From 1971 throughout the mid-1980s, the Commission introduced numerous pieces of legislation, subsequently passed by the Virginia General Assembly, to further its goal of ensuring safe, decent affordable housing for every Virginian. Commission accomplishments during that time period include:

- 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 Virginia Condominium Act
- The Virginia Real Estate Cooperative Act.

In 1987, the Commission proposed the creation and capitalization of the landmark Virginia Housing Partnership Fund. In 1988, at the Commission's recommendation, the General Assembly established the Fund and increased state allocations for housing programs from $400,000 to $47.5 million for the 1989-90 biennium. Other successful 1987-88 recommendations include the establishment of a Virginia income tax voluntary contribution program for housing programs, the Virginia Housing Foundation (now the Virginia Community Development Corporation), and the annual Governor's Conference on Housing.

Commission recommendations embraced by the 1989 General Assembly include: a state low income housing tax credit program; 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 development of affordable housing.

In 1990, the General Assembly approved additional Commission initiatives, including: a $3.0 million program to provide indoor plumbing for rural Virginians; a tax credit program for landlords providing rent discounts to low income elderly or disabled tenants; a legislative mandate that localities study affordable housing in preparing their comprehensive plans; and legislation requiring localities to provide for the placement of double-wide manufactured housing in districts zoned primarily for agricultural purposes.

Commission recommendations passed by the 1991 General Assembly include: amendments to the Virginia Fair Housing law to ensure that Virginia law is substantially equivalent to federal law; amendments to the Virginia Residential Landlord and Tenant Act reducing the exemption for single family rental housing from ten to four units held by owners of such property (and thereby ensuring that some sixty percent of such rental units in the state are covered by the Act); and establishment of a Virginia Manufactured Housing Licensing and Transaction Recovery Fund.

1991 Work Program

The Commission in 1991 focused on the following broad areas of study: Preservation of Affordable Housing, Affordable Housing Finance, and the Virginia Condominium Act. As in previous years, the Chairman appointed Subcommittees comprised of a cross section of housing advocates to share with the Commission their insight and expertise on designated study issues. To gather testimony on those issues, the Commission convened regional public hearings 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 1991 Governor's Conference on Housing—the largest housing-related gathering regularly held in the United States.

Following the public hearings and the Governor's Conference, the Commission, joined by its Subcommittees and the Boards and key staff of DHCD, VHDA, and the Virginia Housing Research Center, convened its annual legislative work session. After reviewing testimony from public hearings, issue papers prepared by its staff and staff of DHCD and VHDA, and Subcommittee recommendations, the Virginia Housing Study Commission unanimously agreed on the recommendations published in this report.

The Commission and its Executive Director express sincere gratitude and appreciation to all who have contributed to its work, particularly Subcommittee members; the DHCD Office of Policy Analysis and Research; Lucia Anna Trigiani, Attorney at Law, Hazel & Thomas, P.C.; Staff Attorneys of Legal Services Corporation of Northern Virginia and the Virginia Poverty Law Center; those who participated in the Commission public hearings and the Governor's Conference on Housing; and housing advocates across the Commonwealth who have actively assisted the Commission.

EXECUTIVE SUMMARY

Following is a brief summary of Virginia Housing Study Commission recommendations to the Governor and 1992 General Assembly of Virginia.

Preservation of Affordable Housing

Redemption of Tenancies: Preventing Homelessness

To provide for a more equitable outcome in some cases of eviction, and in turn prevent homelessness, the Commission recommends enacting legislation to provide for the right of redemption in cases of unlawful detainer. Under such provision, which will apply to all residential tenancies, the tenant would be allowed to redeem the tenancy not more than one time in any twelve-month period of continuous residency in the dwelling unit. The tenant also would be required to pay all rent and arrears, late charges, interest, and costs prior to the trial date for an eviction action.

Under current Virginia law, a tenant has the right to redeem his tenancy during the five-day time period following receipt of notice that his rent payment is late and he must pay the rent in full or vacate the rental premises. After such five-day period, even if the tenant is willing and able to pay the rent and any related fees before the eviction action goes to trial, the landlord may still reserve his right to evict the tenant.

Submetering and Energy Allocation Equipment: Ensuring Accuracy for Landlords and Tenants

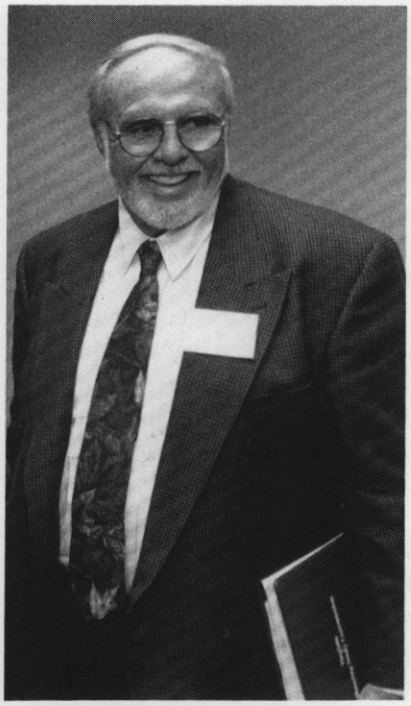
The Commission believes that landlords and tenants would benefit from codified provisions governing the use of submetering and energy allocation equipment, and, together with the State Corporation Commission, will introduce legislation on the subject in 1992.

At-Risk Properties: Maintaining the Inventory

In 1989, the Commission requested that the Virginia Housing Development Authority take the lead in identifying the more than 13,000 rental units in the Commonwealth at risk of being lost as affordable housing due to prepayment of a mortgage assisted by federal or state financing, opt out of federal or state subsidy contracts, expiration of such subsidy contracts, physical deterioration, or foreclosure. The Commission also requested that VHDA act as a preservation clearinghouse for such properties; design strategies and procedures for their preservation; and annually report to the Commission on the status of such properties and efforts underway to retain them as part of Virginia's affordable housing inventory.

The VHDA in 1990 established an interagency committee, comprised of representatives of the Authority, the Department of Housing and Community Development, U. S. Department of Housing and Urban Development, and Farmers Home Administration, to compile an inventory of all at-risk properties in the state and determine the degree to which they are at risk of being

lost from the affordable housing inventory. That committee has largely completed the collection, tabulation, and editing of data on projects funded through the Section 236, Section 221(d)(3), Section 8 New Construction/ Substantial Rehabilitation, Section 202, and Section 515 programs. Information has also been collected from HUD, FmHA, and VHDA on troubled and potentially troubled projects in those agencies' portfolios. Work in progress includes the tabulation of survey data on rental properties financed by local bond issuing agencies through tax-exempt bonds.



Commission member Lewis W. Parker, Jr.

Virginia Clearinghouse and Preservation Strategies

The VHDA will carry out its role as a clearinghouse on expiring use properties by tracking all notices of intent by owners to prepay under the HUD and FmHA preservation programs and providing that information to local governments, nonprofit housing organizations, and regional planning bodies. The VHDA will also disseminate data on the assisted housing stock to these same parties to assist them in developing preservation plans and strategies.

The VHDA Board of Commissioners, as part of an overall review of the Authority's multi-family lending programs, has approved a plan which will enable the financing of rehabilitation or acquisition and rehabilitation of existing low income rental housing. Also, VHDA's Nonprofit Advisory Committee will provide information on how the Authority can best assist nonprofits in the purchase of at-risk properties.

In its first annual report to the Commission, VHDA makes the following recommendations.

Financing for Expiring Use Projects

To foster project purchases under the HUD preservation program by nonprofit and tenant organizations:

- VHDA should seek to supplement, as necessary, private funding of Section 241/223(f) loans for project acquisition by nonprofits.
- Priority should be given under the Virginia Housing Partnership Fund Multi-Family Loan Program to loans to nonprofits for the five percent equity contribution required under the HUD Section 241/223(f) Program.
- Efforts should be made to develop funding sources for the up-front soft costs incurred by nonprofits in purchasing at-risk projects under the HUD preservation program.

Private Nonprofit and Public Purchasers

State assistance will play a critical role in helping nonprofit and tenant groups successfully purchase and subsequently manage at-risk Section 236, Section 221(d)(3), and Section 515 projects. The Virginia Housing Training Center—administered by the DHCD in partnership with VHDA and the United Way of Virginia—should design and implement training programs for

nonprofit and tenant organizations on the HUD and FmHA preservation programs. The Center should expand and give priority to training programs for nonprofit and cooperative housing sponsors on housing management issues. In addition, the VHDA Board has authorized staff to pursue opportunities to increase or preserve the stock of affordable rental housing through the purchase and ownership of rental properties.

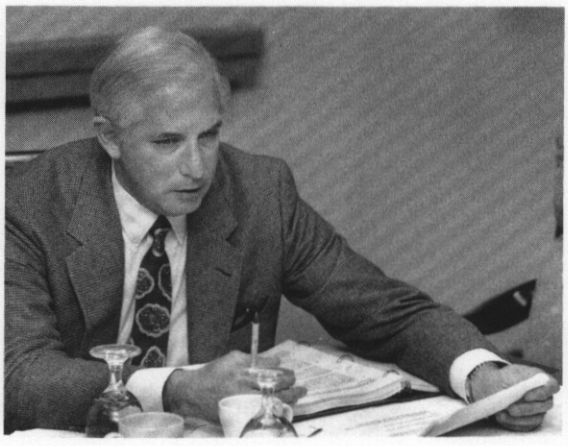
Troubled Projects

The potential loss of troubled Section 236 and Section 221(d)(3) properties equals that posed to the low income housing inventory due to expiring use restrictions. Inadequate operating and capital reserves to make the repairs and improvements that age now necessitates, compounded by weak property management, weak local rental housing markets, and the overlay of other issues, such as serious drug problems, result in most troubled properties needing an infusion of outside cash if they are to remain viable as affordable units.

The Authority and DHCD should work closely with HUD and FmHA to identify resources to address the problems of troubled properties. In addition, the four agencies should cooperate in providing management training and assistance when and where appropriate and in facilitating the transfer of management or ownership when needed to improve project conditions.

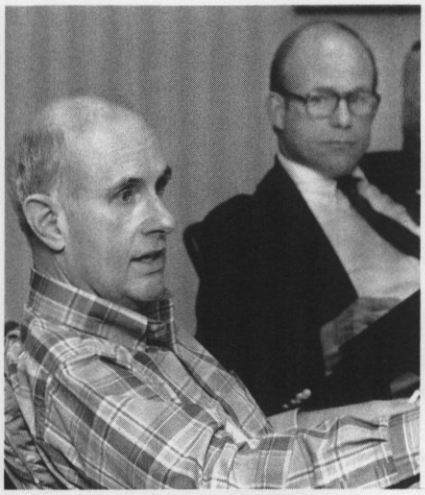
Planning and Zoning: Meeting Regional Affordable Housing Needs

To clarify further the Commonwealth's opposition to exclusionary regulatory barriers to affordable housing, and to affirm the responsibility of localities to consider the current and future affordable housing needs of a more broadly defined community, the Commission recommends amending Sections 15.1-446.1, 15.1-447, and 15.1-489 of the Code of Virginia as they relate to 1) the preparation of comprehensive plans, 2) studies to be undertaken in connection with the preparation of such plans, and 3) the purpose of a zoning ordinance, respectively. The proposed amendment to Section



Commission member Richard J. November.

15.1-446.1 would provide that a comprehensive plan may include the designation of areas for the implementation of measures to promote the construction and maintenance of affordable housing sufficient to meet the current and future needs of all household types and all levels of income in the locality and of a reasonable proportion of the current and future needs of the planning district within which the locality is situated. Similar language would be introduced to amend the Code section relating to preparation of the comprehensive plan, and to the section which mandates consideration of various purposes promoting the health, safety, or general welfare of the public.



Commission members James M. Scott (left) and James F. Almand.

Virginia Mobile Home Lot Rental Act: Expanding Consumer Protection

Manufactured homes, more often referred to as mobile homes, are a growing source of affordable housing in the Commonwealth and are a particularly important affordable housing resource for elderly households. According to the 1990 Census of Housing, over 337,000 Virginians reside in mobile homes, which represent 8.2 percent of the total year-round housing stock of Virginia.

Although many provisions of the Mobile Home Lot Rental Act are similar to or the same as provisions of the Virginia Residential Landlord and Tenant Act, a manufactured housing park tenancy differs from a typical residential tenancy in that mobile home park residents generally own the dwelling structures in which they reside. Because of the significant expense associated with discontinuing and transporting a mobile home, and because of the shortage of rental lot spaces in many areas of the state, the financial burden of relocating following termination of a lease is generally much greater for mobile home owners than for typical apartment tenants. Accordingly, legal protections needed by mobile home park residents are somewhat different from those set forth for apartment residents.

To address the following critical issues and problems relating to mobile home park tenancies in the Commonwealth, the Commission recommends these amendments to the Virginia Mobile Home Lot Rental Act:

1. **Lease Terms and Renewal**

   Require mobile home park owners to offer all current and prospective year-round residents a rental agreement for a period of at least one year.

2. **Eviction**

   Limit a park owner's right to evict a tenant for "good cause." The following specified actions by the tenant would be good cause for eviction.

   - Nonpayment of rent.
   - Violation of the applicable building and housing code caused by a lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent.

- Violation of a federal, state, or local law or ordinance that is detrimental to the safety and welfare of other residents in the park.
- Violation of any rule or provision of the rental agreement materially affecting his own health and safety or that of others.
- Repeated violation of any rule or provision of the rental agreement occurring within a six-month period.

Evicted tenants would be allowed ninety days after judgment has been entered to relocate or to sell their home, but would not be permitted to reside in the home during the period after the eviction. Evicted tenants would be responsible for rent payments during this period, and to protect the landlord, the park would have a lien on the home to the extent of all rental payments due.

3. Fees

Prohibit park owners from imposing on tenants exit fees, which result in a punitive charge on tenants for leaving a park. In addition, prohibit a park owner who purchases any utility service from a publicly regulated utility for sale to a resident from charging an amount that exceeds the actual amount that the utility charges the park owner.

4. Sale of a Mobile Home

Provide that the age of the mobile home shall not be the exclusive or dominant criterion for prohibiting or restricting a home from being sold or rented in a park or retained in the park after the sale is consummated. Also, provide that a park owner shall not prohibit the mobile home owner from placing a "for sale" sign on or in his home except that the size, placement, and character of all signs are subject to rules and regulations of the park.

5. Retaliatory Conduct/Redundancy of Code Sections

Delete the reference to Section 55-248.39 of the Code of Virginia relating to the Act. Such reference is redundant given language in Section 55-248.50 addressing retaliatory conduct by a landlord under a mobile home lot tenancy.

6. Retaliatory Conduct/Increased Protection for Tenants

In order to make more equitable legal action regarding retaliation and tenancy termination, delete the following sentence in Section 55-248.50(C)(3) of the Code:

"The landlord may terminate a rental agreement pursuant to Section 55-248.46 [relating to termination of tenancy] or for any reason not prohibited by law unless the court finds that the primary reason for the termination was retaliation."

7. Change in Use

At least six states have enacted statutes that require park owners to offer current tenants or a tenant organization of owners within the park some form of right of first refusal to purchase the park where the land is

being sold and the use of the park is to be changed. Under such arrangement, tenants have an opportunity to protect the equity in their homes and avoid costly moves required with the closing of a park, and the owner retains the opportunity to receive a fair return on his investment. In 1992, the Commission will continue to address the issue of change of use of mobile home parks as such change relates to tenants.

8. Terminology

Because the term "mobile" home is a generally inaccurate term and often creates a negative image for an important type of housing, there has been a tendency in recent years to replace the term "mobile" home with the term "manufactured" home. For purposes of clarity and consistency, the Commission recommends striking all references to the term "mobile" home in the Mobile Home Lot Rental Act and inserting the term "manufactured" home.

Affordable Housing Finance

Virginia Housing Partnership Fund: Leveraging Critical Housing Capital

The Virginia Housing Partnership Fund, established by the Virginia General Assembly in 1988 at the recommendation of the Commission, has leveraged over $120 million for affordable housing programs in the Commonwealth.

As originally established, the Virginia Housing Partnership Fund was designed to be self-sustaining within ten to thirteen years if capitalized with an annual appropriation of some $20 million. In the 1991-92 biennium, however, the bulk of Partnership Fund revenues — $38 million — was removed from the state General Fund budget. The VHDA then extended a $38 million line of credit to allow for the ongoing operation of 1991-92 Fund programs. While the VHDA Board of Commissioners has indicated that the present line of credit will remain in place, members have also stated that fiscal projections indicate an inability on the part of the Authority to duplicate the line of credit for the 1993-94 biennium.

Commission members Clive L. DuVal 2d (left) and Clinton Miller.

The Commission recommends that, to the extent funds are available, there be full capitalization of the Fund in the 1993-94 biennial budget for the Commonwealth, and that the Fund be one of the highest priority funding items therein. Should there not be adequate General Fund revenues available to capitalize the Partnership Fund, then it should be supported through other means of financing.

Historic Properties: Revitalizing Affordable Housing

The preservation of historic properties and districts and the provision of low income housing are goals of the nation as well as of the Commonwealth, and legislation has been enacted by both the United States Congress and the Virginia General Assembly to promote such goals. However, despite encouragement at both federal and state levels for the preservation and rehabilitation of older and historic properties, many such properties in Virginia remain in deteriorating condition or vacant. Demolition of such structures for new development not only deprives neighborhoods of their cultural, architectural, and historic integrity, but also eliminates buildings that could have been rehabilitated to provide much-needed affordable housing. The rehabilitation of such structures for low income housing would preserve historically significant buildings, revitalize historic districts and neighborhoods, and create new housing opportunities within such neighborhoods for low income residents.

The Commission recommends the establishment of a state income tax credit program for expenditures incurred to rehabilitate older or historic structures for low income housing. The program, to be enacted during the 1992 Virginia General Assembly Session with an effective date of January 1, 1993, would provide for a maximum of $500,000 in tax credits for any calendar year. (If a tax credit of 20 percent of qualified rehabilitation expenditures were allowed, for example, $500,000 in tax credits could generate $2.5 million in private investment for preservation and low income housing projects in Virginia.)

In addition, the Commission recommends that the Department of Housing and Community Development and the Department of Historic Resources, in collaboration with the Preservation Alliance of Virginia and the Virginia Housing Coalition, develop and provide training in 1992 on opportunities and financial incentives for the rehabilitation of older and historic buildings for low income housing.

Tax Credits: Encouraging Rent Discounts

In 1989, the Commission recommended that the Commonwealth establish a state tax credits program encouraging landlords to reduce rents for low income elderly or disabled tenants. The program, believed to be the first of its kind in the nation, was subsequently approved by the Virginia General Assembly and became effective for taxable years beginning on or after January 1,

1991. The program is capped at $1.0 million in tax credits per fiscal year, and the credit amount equals 50 percent of the rent reduction, which must be at least 15 percent of the rents charged to other tenants for comparable units in the same property.

By current program definition, single family residences are not eligible for credits because there are no other units in the same property. The Commission recommends amending the Code to provide for the program eligibility of single family rental units, thereby promoting greater program participation in rural areas where multi-family rental opportunities are not widely available.

VHDA Field Originators: Serving Rural Virginians

To serve rural Virginians more effectively, Virginia Housing Development Authority has approved the use of "field originators" to accept loan applications on its behalf. Currently, such mortgage originators are required to obtain a license under the Mortgage Lender and Broker Act. Because the financial and administrative burdens of such licensing requirement would impede the ability of VHDA to obtain the services of field originators, and because there is virtually no risk or harm to the public from providing an exemption from the Act for VHDA field originators, the Commission recommends exempting from the Act the activities of the agents and representatives of VHDA in offering, accepting, completing, and processing mortgage loan applications under VHDA's programs.

Housing Affordability Impact Statements: Assessing Regulatory Costs

It is widely recognized that state laws, local ordinances, and regulations enforced by all levels of government can affect the cost of housing, and there is continuing concern that the full impact of many governmental actions upon housing costs may not be considered adequately before their enactment or implementation.

In 1991, the Commission reviewed the feasibility and desirability of requiring statewide and/or local housing affordability impact statements prior to the passage of such regulations, fees, or other requirements which affect the cost of housing. More specifically, the Commission examined methods of increasing awareness of housing affordability in the Virginia state legislative and regulatory processes, and in Virginia localities.

The Commission is of the opinion that assessing the impact of such regulations is one of the most challenging issues facing affordable housing advocates, and will make available to the Joint Legislative Audit and Review Commission (JLARC)—currently studying the Virginia Administrative Process Act—the material it has prepared and considered to date. In addition, the Commission will continue to refine legislative options in anticipation of introducing initiatives during the 1993 Virginia General Assembly Session.

Additional Issues

Comprehensive Housing Affordability Strategy

In 1991, the Virginia Department of Housing and Community Development, in cooperation with the Virginia Housing Development Authority, drafted the Comprehensive Housing Affordability Strategy (CHAS) for the Commonwealth of Virginia as required by the National Affordable Housing Act of 1990. The Virginia Housing Study Commission was represented at each of four CHAS advisory group meetings and five regional workshops, and submitted comments on the draft CHAS.

Commission member Virgia B. Hobson.

The Commission applauds the CHAS mission statement asserting that housing is a basic need of all Virginians, and concurs with the eleven broad CHAS goals—most of which have also been identified by the Commission as documented needs in the Commonwealth. The CHAS, which sets forth 50 specific strategies to meet its eleven stated goals, identifies the Commission as the lead agency in implementing thirteen strategies and as a participating agency in ten others. In 1992 and thereafter, the Commission will take the lead on strategies relating to the Virginia Housing Partnership Fund; the Community Reinvestment Act; regulatory barriers to affordable housing development; state land use policies; and housing affordability assessments as it continues to work in close cooperation with DHCD, VHDA, HUD, FmHA, and other housing advocates across the Commonwealth in implementing CHAS strategies and meeting its goals.

Growth Management and Affordable Housing

The Virginia Housing Study Commission in 1992 will continue its advocacy to ensure that housing affordability issues are addressed by the Virginia Commission on Population Growth and Development (the Growth Commission), and that housing affordability provisions become an integral part of any growth management system proposed for adoption in the Commonwealth.

Manufactured Housing Licensing and Transaction Recovery Fund Act

The Commission will introduce several amendments to clarify its landmark comprehensive consumer protection legislation passed by the 1991 Virginia General Assembly to establish a manufactured housing licensing and transaction recovery fund effective July 1, 1992.

Mandatory Seller Disclosure

The Commission has expressed interest in mandatory seller disclosure of material facts relating to residential properties, and has requested that the Virginia Association of Realtors provide additional information on the concept and specific legislative provisions for its implementation.

Senate Joint Resolution 204: Virginia Condominium Act

Senate Joint Resolution 204, passed by the 1991 Virginia General Assembly, directed the Commission to study the provisions of the Virginia Condominium Act as they relate to the operation and management of condominium unit owners associations. The Act was originally a 1974 Commission initiative. The overall issue considered was whether specific issues related to the operation and management of condominium unit owners associations should be legislated in detail or left, within parameters of public policy, to the drafter of documents for each individual condominium.

The Commission makes the following recommendations for 1992 legislative action pursuant to the Act.

1. Association Books and Records

Amend Act provisions in Sections 55-79.74:1 and 55-79.75, and correlative provisions of the Property Owners' Association Act (Section 55-510C) to provide that:

a. Books and records kept by or on behalf of a unit owners association may be withheld from examination or copying by unit owners and contract purchasers to the extent that the records concern:
   1. Personnel matters or a person's medical records;
   2. Communications with legal counsel or attorney work product;
   3. Transactions currently in negotiation and agreements containing confidentiality requirements;
   4. Potential or pending litigation;
   5. Pending matters involving enforcement of the association documents or rules and regulations or any architectural guidelines promulgated pursuant thereto;
   6. Disclosure of information in violation of law; or
   7. Meeting minutes or other records of an executive session of the executive organ held pursuant to subsection B. of Section 55-79.75.

b. The unit owners association may impose and collect a charge, reflecting the actual costs of materials and labor, prior to providing copies of any books and records to a member in good standing under this section.

2. Special Assessments

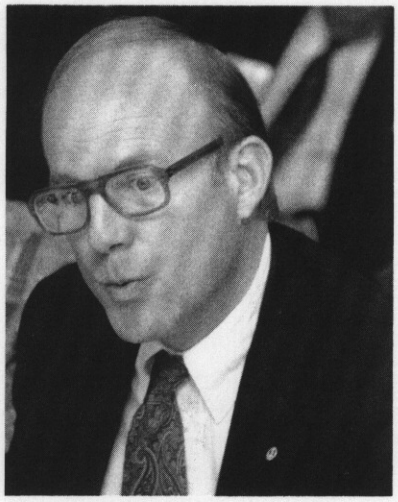
Amend Section 55-79.83(b) of the Act to permit the Board of Directors to impose reasonable user fees for preservation of common element facilities.

3. Assessment Collection

a. The VHDA should research the issue of whether the association's lien for non-payment of assessments (Section 55-79.84A of the Act) should have limited "super-priority" over the first deed of trust as currently provided in the Uniform Condominium Act and the District of Columbia Condominium Act. More specifically, the VHDA should research the issue with mortgage insurance agencies and consult

bond counsel to determine the definition of "assessment" under current bonding regulations. In addition, the Subcommittee should seek comment from mortgage lenders.

b. Amend the Act, Section 55-79.84D, to lengthen from six to 24 months the period for enforcement of condominium assessment liens, consistent with correlative provisions of the Property Owners' Association Act.



Commission member James F. Almand.

4. Board of Directors Authority

The Commission will seek additional public comment on whether Board authority and powers should be restricted to prohibit actions which in effect create discriminatory rules (e.g., the requirement that renters obtain liability insurance or be subject to eviction).

5. Budget Adoption

Individual unit owners should have notice of Board action and have the opportunity to participate in development of the budget.

6. Dispute Resolution

The Subcommittee and Commission engaged in extensive discussion as to whether governmental involvement in the relationship between condominium unit owners and the association Board of Directors is needed and appropriate. Such discussion, which focused on possible alternative dispute resolution forums and ombudsman-type services, indicates the necessity for seeking additional public comment and study of related issues including cost analysis, feasibility, and desirability.

The Commission considered more than two dozen additional issues related to the Act and recommends that no legislative action is needed on such issues at this time. The Commission will continue its study of the Act in 1992.

PRESERVATION OF AFFORDABLE HOUSING

Redemption of Tenancies: Preventing Homelessness

The number of homeless persons in Virginia continues to increase, and evictions are a key factor in this tragic rise in homelessness. At its 1990 and 1991 public hearings and in correspondence, the Virginia Housing Study Commission has been advised that amending the Code of Virginia to provide tenants a right of redemption could prevent some evictions and thereby preclude some cases of related homelessness.

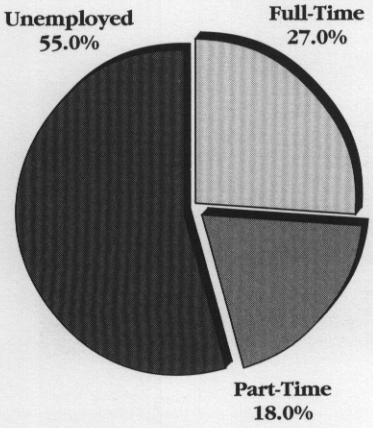
Under current Virginia statutory law for all residential tenancies, a tenant has the right to redeem his tenancy during the five-day time period following receipt of notice that his rent payment is late and he must pay the rent in full or vacate the rental premises. After this five-day period, even if the tenant is willing and able to pay the rent in full (plus any related late fees) before the eviction action goes to trial, the landlord may still reserve his right to evict the tenant.

Under the Virginia Residential Landlord and Tenant Act, the landlord waives such right if he fails to provide the tenant with written notice of his reservation of right to terminate the tenancy. However, if the landlord has accepted the payment "with reservation," Virginia Code notice provisions do not give a trial judge discretion regarding the eviction. The judge must allow the eviction if the landlord accepted payment "with reservation" following the five-day period of material noncompliance.

The judge must proceed with the eviction even if the landlord has accepted "with reservation" rental payments made possible through financial assistance received from a local government, social service agency, charitable, or other homeless intervention program. Although some such programs now require the landlord to sign a written waiver of the right to evict before assistance is granted, the landlord may refuse to accept full recompense for any losses caused by the tenant's default, frustrate the goals of

Income/Benefits Status of Virginia Shelter Residents

Income/Employment

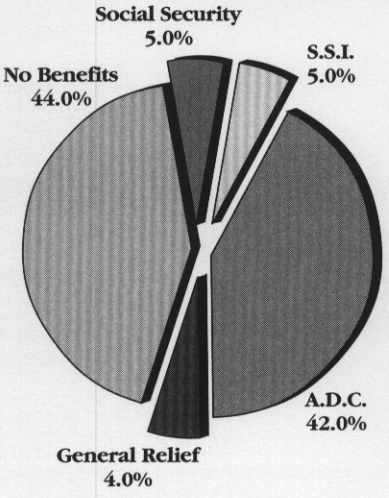


Facts:

Federal Minimum Wage (Full Time)
$4.25 per hour,
$8,500 annually

State Minimum Wage (Full Time)
$3.65 per hour,
$7,300 annually

Income/Benefits

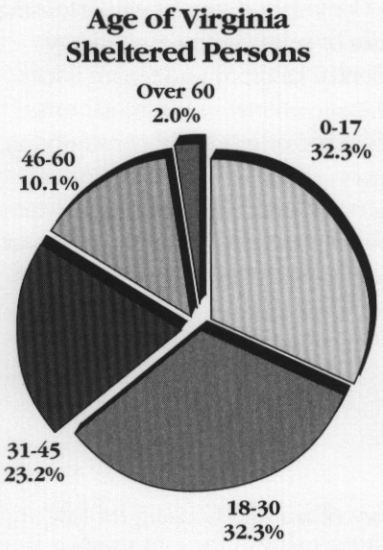


Facts:

Supplemental Security Income (S.S.I.)
$407 per month,
$4,884 annually

Aid to Dependent Children (A.D.C.)
$291 per month or
$3,492 annually for a family of three

General Relief
$142 median per month for a single adult



these programs, and impose additional costs on an already overburdened assistance system by evicting tenants who may have no other place to live.

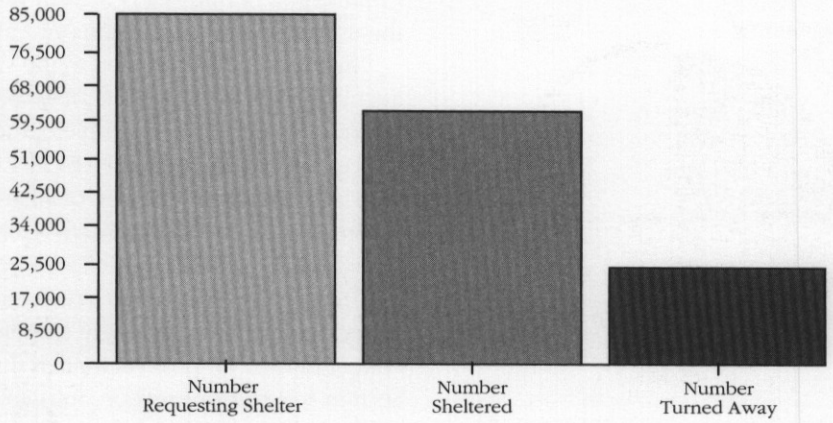
Three of Virginia's neighboring states have redemption of tenancy statutes. North Carolina and West Virginia both allow redemption of a tenancy any time before trial if the tenant pays all late fees, rent, and court costs. Maryland's statute allows redemption of a tenancy any time before execution of the writ of eviction, but limits the number of redemptions to three within a twelve-month period.

The right of redemption is well established in Virginia common law action for ejectment, in which a tenant may redeem a tenancy at any time prior to trial given full payment of rent, late fees, and costs. Virginia also recognizes the principle of redemption in her law of foreclosure, whereby the delinquent mortgagor can redeem at any time up to the foreclosure auction and, in some cases, even after that event.

Recommendation

The Virginia Housing Study Commission recommends amending Section 55-243 of the Code of Virginia to provide for the right of redemption of tenancy in cases of unlawful detainer. Under such provision, which would apply to all residential tenancies, the tenant would be able to redeem the tenancy not more than one time during any twelve-month period of continuous residency in the dwelling unit. Further, to invoke a right of redemption, the tenant would be required to pay all rent and arrears, along with any reasonable late charges contracted for in a written rental agreement, interest, and costs, prior to the trial date for an eviction action. Finally, any waiver of such right of redemption by a tenant would be unenforceable.

Virginia Homeless Persons Requesting Shelter



Submetering and Energy Allocation Equipment: Ensuring Accuracy for Landlords and Tenants

At the request of the State Corporation Commission, the Virginia Housing Study Commission in 1991 addressed the use of submetering and energy allocation equipment as they relate to residential landlord and tenant issues. Such devices are used to determine approximate energy use in rental units not individually metered to measure exact electric or gas utility consumption.

In testimony and correspondence received, the Housing Study Commission has become aware of problems facing both landlords and tenants when some companies providing submetering and allocation services fail to submit utility invoices in a timely and business-like manner. Landlords and tenants would benefit from language in the Code of Virginia governing the use of submetering and allocation equipment, and the Commission is working closely with the State Corporation Commission to introduce legislation on the subject in the 1992 Session of the Virginia General Assembly.

At-Risk Properties: Maintaining the Inventory

The preservation of the current inventory of assisted housing for low and moderate income households remains a critical housing issue in Virginia and nationally, and is of continuing concern to the Virginia Housing Study Commission. In the Commonwealth alone, well over 13,000 publicly assisted low income rental housing units may be lost as affordable housing resources due to prepayment of a mortgage assisted by federal or state financing, opt out of federal or state subsidy contracts, expiration of such subsidy contracts, physical deterioration, or foreclosure. Low-income rental projects experiencing serious physical, financial, and/or management problems, generally referred to as troubled projects, are a subset of the total group of at-risk properties.

In 1989, the Housing Study Commission requested the Virginia Housing Development Authority to take the lead in identifying at-risk properties; acting as a preservation clearinghouse for such properties; designing strategies and procedures for their preservation; and annually reporting to the Commission on the status of such properties and efforts underway to retain the units as part of the Commonwealth's affordable housing inventory.

In 1990, VHDA reported to the Commission on the efforts of an interagency committee of staff representing the Authority, the Department of Housing and Community Development, the Virginia State Farmers Home Office, and the Richmond HUD Field Office. The committee was charged with compiling an inventory of all at-risk properties in the state and determining the degree to which any such properties are at risk of being lost as affordable rental stock.

In its 1991 status report, VHDA advised the Commission that the interagency committee has largely completed the collection, tabulation, and editing of data on projects funded through the Section 236, Section 221(d)(3), Section 8 New Construction/Substantial Rehabilitation, Section 202, and Section 515 programs. Information has also been collected from HUD, FmHA, and VHDA on troubled and potentially troubled projects in those agencies' portfolios.

Work in progress includes the tabulation of survey data on rental properties financed by local bond issuing agencies through tax-exempt bonds. By federal law, 20 percent of the units in these projects is restricted to low income occupancy for the longer of 10 to 15 years or one half the term of the bonds. The VHDA in mid-1992 will submit to the Commission an interim report on the committee's findings pursuant to such properties.

Following are excerpts from the 1991 VHDA status report on at-risk properties in the Commonwealth.

Status of At-Risk Properties

Seven percent (46) of the projects and 11 percent (5,580) of the units subsidized under the Section 236, Section 221(d)(3) BMIR, Section 8 New Construction/Substantial Rehabilitation, Section 8 Loan Management and Section 515 deep subsidy programs are "currently at-risk" (i.e., are troubled or have filed a notice of intent to opt out of the low income use restrictions contained in their mortgage). An additional six percent (35) of the projects and eight percent (4,362) of the units subsidized under these programs are "potentially at-risk" (i.e., potentially troubled or eligible to file notices of intent to opt out of the low income use restrictions in their mortgages). In total, 13 percent of projects (81) and 19 percent of units (9,942) are considered "at-risk." Within the total group of at-risk projects, there is roughly an even split between troubled projects (45) and projects with expiring use provisions (43).

At-Risk Projects By Degree Of Risk

	Currently At-Risk Projects		Potentially At-Risk Projects		All At-Risk Projects	
Planning District	Number	% of Tot. Projects	Number	% of Tot. Projects	Number	% of Tot. Projects
1	0	0	0	0	0	0
2	0	0	1	9	1	9
3	2	7	1	3	3	10
4	3	9	0	0	3	9
5	1	3	5	17	6	21
6	1	3	2	5	3	8
7	3	12	0	0	3	12
8	6	7	9	11	15	18
9	0	0	0	0	0	0
10	1	10	1	10	2	20
11	3	12	0	0	3	12
12	0	0	1	4	1	4
13	0	0	1	6	1	6
14	0	0	0	0	0	0
15	6	10	3	5	9	15
16	1	7	0	0	1	7
17	0	0	0	0	0	0
18	0	0	0	0	0	0
19	1	4	0	0	1	4
20	14	15	7	8	21	23
21	4	8	4	8	8	16
22	0	0	0	0	0	0
Virginia	46	7	35	6	81	13

At-Risk Units By Degree Of Risk

	Currently At-Risk Units		Potentially At-Risk Units		All At-Risk Units	
Planning District	Number	% of Tot. Units	Number	% of Tot. Units	Number	% of Tot. Units
1	0	0	0	0	0	0
2	0	0	16	3	16	3
3	133	8	113	7	246	15
4	188	9	0	0	188	9
5	15	1	568	24	583	25
6	128	5	124	5	252	10
7	294	20	0	0	294	20
8	1,027	11	1,319	14	2,346	24
9	0	0	0	0	0	0
10	14	2	202	31	216	33
11	389	21	0	0	389	21
12	0	0	106	6	106	6
13	0	0	48	6	48	6
14	0	0	0	0	0	0
15	1,094	14	402	5	1,496	19
16	147	14	0	0	147	14
17	0	0	0	0	0	0
18	0	0	0	0	0	0
19	72	4	0	0	72	4
20	1,214	13	844	9	2,058	23
21	865	16	620	12	1,485	28
22	0	0	0	0	0	0
Virginia	5,580	11	4,362	8	9,942	19

At-Risk Projects And Units By At-Risk Factor

	Total At-Risk Properties		Use Restriction Period Ended or Due to End Within 24 Months		Vacancy Problems		In Need of Repair or Capital Improvements		Financial Problems		Management Problems		In Default		Other Problems	
Planning District	Projects	Units	Projects	Units	Projects	Units	Projects	Units	Projects	Units	Projects	Units	Projects	Units	Projects	Units
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	1	16	1	16	0	0	0	0	0	0	0	0	0	0	0	0
3	3	246	3	246	0	0	0	0	0	0	0	0	0	0	0	0
4	3	188	0	0	1	100	1	100	2	152	1	36	1	52	1	52
5	6	583	4	468	2	208	3	223	2	123	1	15	0	0	1	108
6	3	252	3	252	0	0	0	0	0	0	0	0	0	0	0	0
7	3	294	0	0	0	0	0	0	3	294	3	294	0	0	0	0
8	15	2,346	9	1,319	0	0	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10	2	216	1	202	1	14	0	0	1	14	1	14	1	14	0	0
11	3	389	0	0	2	288	2	288	3	389	1	101	0	0	2	288
12	1	106	1	106	0	0	0	0	0	0	0	0	0	0	0	0
13	1	48	1	48	0	0	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15	9	1,496	6	1,080	2	212	3	418	1	100	0	0	0	0	0	0
16	1	147	0	0	0	0	1	147	1	147	1	147	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19	1	72	1	72	0	0	1	72	0	0	0	0	0	0	0	0
20	21	2,058	9	1,011	4	359	9	766	7	480	6	581	5	240	1	109
21	8	1,485	4	753	2	480	2	480	3	607	2	480	0	0	2	480
22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	81	9,942	43	5,573	14	1,661	22	2,494	23	2,306	16	1,668	7	306	7	1,037

Notes
1. "At-Risk" projects include projects currently and potentially at-risk.
2. Includes projects subsidized under the Section 236, Section 221d3 BMIR, Section 8 New Construction/Sub. Rehab., Section 8 Loan Management, Section 202 and Section 515 deep subsidy programs.
3. "Other Problems" include serious drug problems and bankruptcy filings by owners.

Over the next five years, the number of at-risk projects will grow considerably. A total of 111 projects containing 13,689 units are currently eligible or will become eligible within such time frame to opt out of mortgage-based use restrictions. The number of expiring Section 8 loan management contracts will increase and some of the oldest of the Section 8 New Construction/Substantial Rehabilitation projects will reach the end of their 20-year subsidy contracts.

In addition, the current deep recession in commercial real estate is continuing to take a toll. Weak local rental housing markets are creating vacancies in some older projects for which owners have failed to make repairs and improvements needed to keep units marketable. Bankruptcy filings are also starting to impact some subsidized projects. Therefore, additions can be expected to the list of troubled projects.

Virginia Clearinghouse and Preservation Strategies

The VHDA will carry out its role as a clearinghouse on expiring use properties by tracking all notices of intent by owners to prepay under the HUD and FmHA preservation programs and providing that information to local governments, nonprofit housing organizations, and regional planning

bodies. The VHDA also intends to disseminate data on the assisted housing stock to these same parties to assist them in developing preservation plans and strategies.

The VHDA Board of Commissioners, as part of an overall review of the Authority's multi-family lending programs, has approved a plan which will enable the financing of rehabilitation or acquisition and rehabilitation of existing low income rental housing. Also, VHDA's Nonprofit Advisory Committee will provide information on how the Authority can best assist nonprofits in the purchase of at-risk properties.

1991 Activity

In addition to providing the Commission with an inventory of at-risk projects, VHDA in its annual status report included information on 1991 federal actions (HUD and FmHA preservation programs) and 1991 owner actions related to at-risk HUD and FmHA projects.

a) Financing for Expiring Use Projects

The FmHA is authorized to provide direct loans to finance at-risk projects under its preservation program. Therefore, the primary demand for state funding will be by nonprofit and tenant group purchasers of projects under the HUD preservation program. The VHDA recommends the following state action to foster such purchases.

1. VHDA should seek to supplement, as necessary, private funding of Section 241/223(f) loans for project acquisition by nonprofits.
2. Priority should be given under the Virginia Housing Partnership Fund Multi-Family Loan Program to loans to nonprofits for the five percent equity contribution required under the HUD Section 241/223(f) Program.
3. Efforts should be made to develop funding sources for the up-front soft costs incurred by nonprofits in purchasing at-risk projects under the HUD preservation program.

b) Private Nonprofit and Public Purchasers

Because of their long-term commitment to retaining housing for low-income residents, nonprofit and tenant organizations are priority purchasers of expiring use projects under the HUD and FmHA preservation programs. State assistance will play a critical role in helping such groups successfully purchase and subsequently manage at-risk Section 236, Section 221(d)(3), and Section 515 projects.

The VHDA Board has authorized staff to pursue opportunities to increase or preserve the stock of affordable rental housing through the purchase and

ownership of rental properties. At the local government level, the Fairfax Redevelopment and Housing Authority has previously purchased at-risk projects and has authority from the county to continue doing so. Such potential purchases by VHDA, FRHA, and other public housing agencies should minimize the likelihood that any HUD or FmHA project will be lost to the affordable housing stock for want of a qualified preservation purchaser.

The VHDA recommends that the Virginia Housing Training Center—administered by DHCD in partnership with VHDA and the United Way of Virginia—design and implement training programs for nonprofit and tenant organizations on the HUD and FmHA preservation programs. In addition, the Center should expand and give priority to training programs for non-profit and cooperative housing sponsors on housing management issues.

The Housing Study Commission initially expressed interest in the feasibility of VHDA developing a model for use by localities in analyzing the potential for conversion of at-risk units to market-rate units. However, given the emerging complexities of ownership issues, market factors, and economic conditions, the Commission understands that the development of such a predictive model would be neither viable nor of particular assistance to localities.

c) Troubled Projects

At the present time, the problem posed by troubled Section 236 and Section 221(d)(3) properties equals that posed by the potential losses to the low income housing inventory from expiring use restrictions. In part this problem is the result of design flaws in the Section 236 and Section 221(d)(3) BMIR programs which left many properties with insufficient subsidy income during the middle 1970s when rapidly escalating operating costs (particularly for utilities) outpaced owners' ability to set aside sufficient operating and capital reserves to make the repairs and improvements that age now necessitates. In many cases, these difficulties have been compounded by weak property management, weak local rental housing markets, and the overlay of other issues, such as serious drug problems. Most troubled properties will need an infusion of outside cash if they are to remain viable as affordable units.

The VHDA recommends that the Authority and DHCD work closely with HUD and FmHA to identify resources to address the problems of troubled properties. In addition, the four agencies should cooperate in providing management training and assistance when and where appropriate and in facilitating the transfer of management or ownership when needed to improve project conditions.

For a copy of the VHDA 1991 Annual Report on the Status of At-Risk Properties in Virginia, please contact Ms. Carolyn B. Watts, Director of Planning and Research, VHDA, 601 South Belvidere Street, Richmond, Virginia 23220.

Planning and Zoning: Meeting Regional Affordable Housing Needs

In a 1991 decision[1], the New Hampshire Supreme Court ruled that a city could not enforce "blatantly exclusionary" zoning laws that had the effect of preventing the reasonable development of more affordable multi-family housing. Although it rejected imposing a formulaic determination of a locality's affordable housing obligations, the New Hampshire Court accepted the notion that the "general welfare" referred to in the state's enabling legislation applied to a community broader than a single jurisdiction.

Although the detrimental effects of exclusionary practices have been documented time and again, effective remedies remain elusive. The Mount Laurel (New Jersey) approach called for the development of numerical, "fair share" housing obligations through the use of a relatively complex formula. This remedy has had the effect of turning the state's courts into super zoning boards, essentially depriving local legislative bodies of their traditional discretionary authority over land use matters. No other state has followed the remedial pathway broken by the New Jersey court, and even some friends of the fair share concept concede that "the formulaic approach simply does not work."[2]

The practical and political difficulties of the Mount Laurel approach, the reluctance of other states to embrace the remedy, and judicial and legislative traditions in Virginia make it unlikely that a rigidly formulaic approach to breaking down exclusionary barriers would be adopted or implemented in the Commonwealth. Yet housing affordability remains a serious problem for many Virginians, and although many communities have taken steps to facilitate the construction and preservation of more affordable housing, local exclusionary land use practices may still be carried out either by default or design.

Several such practices, widely included in local subdivision and zoning ordinances in Virginia, have been indicted for their exclusionary effects:

- The permitting of only "large lot" zoning for single family residential districts.
- The omission of provisions for multiple family dwellings or other alternative housing types such as accessory apartments from among the list of permitted uses included in local ordinances.
- The increased use of discretionary zoning controls, which have a greater potential for administrative abuses directly or indirectly excluding affordable units and increasing the cost of housing generally.
- The exclusion of manufactured housing units from local ordinances.
- The use of subdivision requirements (such as increased minimum lot widths) that indirectly increase the per lot cost of development.

[1] Wayne Britton et al v. *Town of Chester, N. H.*, __ A. 2d (1991).

[2] John M. Payne, "Rethinking Fair Share: The Judicial Enforcement of Affordable Housing Policies," 16 Real Estate Law Journal (1987), 32.

The impact of overly restrictive zoning on affordable housing is readily apparent. As national zoning experts Charles M. Haar and Jerold S. Kayden observed in 1989: "It does not take a real estate expert to understand that, when a town is zoned only for single-family housing on minimum one-acre lots, low income families are not going to have the chance to live in that community."[3]

During each of the past three sessions of the Virginia General Assembly, new language has been added to the state's primary land use enabling legislation that recognizes the need for affordable housing and permits locally administered incentive programs to facilitate the construction of affordable units. In addition, Virginia Housing Study Commission legislation has urged localities to act voluntarily to eliminate regulatory barriers to various forms of affordable housing and to adopt more flexible zoning techniques that may promote the development of a variety of affordable housing options. Another strategy for razing exclusionary barriers is to clarify further the state's opposition to them and affirm the responsibility of localities to consider the current and future affordable housing needs of a more broadly defined community.

Recommendation

The Virginia Housing Study Commission recommends amending Sections 15.1-446.1, 15.1-447, and 15.1-489 of the Code of Virginia as they relate to 1) the preparation of comprehensive plans, 2) studies to be undertaken in connection with the preparation of such plans, and 3) the purpose of a zoning ordinance, respectively. The proposed amendment to Section 15.1-446.1 would provide that a comprehensive plan may include the designation of areas for the implementation of measures to promote the construction and maintenance of affordable housing sufficient to meet the current and future needs of all household types and all levels of income in the locality and of a reasonable proportion of the current and future needs of the planning district within which the locality is situated. Similar language would be introduced to amend the Code section relating to preparation of the comprehensive plan, and to the section which mandates consideration of various purposes promoting the health, safety, or general welfare of the public.

Virginia Mobile Home Lot Rental Act: Expanding Consumer Protection

Manufactured homes, more often referred to as mobile homes, are a growing source of affordable housing in the Commonwealth. According to the 1990 Census of Housing, over 337,000 Virginians reside in mobile homes, which represent 8.2 percent of the total year-round housing stock of Virginia, an increase from 6.3 percent in 1980. Mobile homes are a particularly important affordable housing resource for elderly households, and the

[3] Charles M. Haar and Jerold S. Kayden, eds., *Zoning and the American Dream, Promises Still to Keep* (Chicago and Washington: Planners Press, 1989), p. x.

Manufactured Housing Units
As a Percentage of Total Virginia Housing Stock: 1990

County	Number of Manufactured Units	% of Total Units
Accomack	1,826	11.5
Albemarle	1,611	6.2
Alleghany	717	13.1
Amelia	770	22.4
Amherst	1,391	13.1
Appomattox	976	19.9
Arlington	18	0.0
Augusta	3,028	14.3
Bath	331	12.8
Bedford	4,004	20.4
Bland	610	22.5
Botetourt	1,156	11.8
Brunswick	1,572	24.3
Buchanan	4,217	34.5
Buckingham	1,262	25.2
Campbell	3,831	20.2
Caroline	1,185	16.3
Carroll	2,347	19.2
Charles City	447	19.3
Charlotte	993	20.1
Chesterfield	2,468	3.2
Clarke	77	1.7
Craig	429	21.5
Culpeper	546	5.2
Cumberland	568	17.9
Dickenson	2,100	29.5
Dinwiddie	1,309	16.3
Essex	542	13.3
Fairfax	2,108	0.7
Fauquier	432	2.4
Floyd	1,023	18.6
Fluvanna	409	8.1
Franklin	3,739	21.3
Frederick	2,182	12.2
Giles	1,144	16.1
Gloucester	2,021	16.2
Goochland	629	12.1
Grayson	1,383	18.4
Greene	595	14.3
Greensville	777	22.9
Halifax	2,317	19.7
Hanover	848	3.6
Henrico	391	0.4
Henry	4,653	20.1
Highland	272	15.5
Isle of Wight	1,998	20.5
James City	1,443	10.1
King and Queen	700	25.9
King George	933	17.7
King William	343	8.2
Lancaster	552	9.3
Lee	2,161	21.1
Loudoun	283	0.9
Louisa	1,874	20.6
Lunenburg	982	19.4
Madison	280	6.2
Mathews	670	14.2
Mecklenburg	3,639	24.9
Middlesex	845	15.4
Montgomery	3,898	14.0
Nelson	801	11.3
New Kent	386	9.7
Northampton	847	13.7
Northumberland	1,029	15.0
Nottoway	814	14.2
Orange	997	11.0
Page	1,152	12.9
Patrick	1,709	21.0
Pittsylvania	5,340	23.4
Powhatan	217	4.4
Prince Edward	1,123	18.5
Prince George	1,098	12.7
Prince William	1,539	2.1
Pulaski	1,963	13.3
Rappahannock	46	1.6
Richmond	492	15.5
Roanoke	775	2.4
Rockbridge	1,091	13.7
Rockingham	2,879	12.7
Russell	3,135	27.1
Scott	1,947	19.5
Shenandoah	989	6.5
Smyth	2,315	17.6
Southampton	893	13.6
Spotsylvania	2,286	11.2
Stafford	1,616	7.9
Surry	806	27.0
Sussex	966	22.7
Tazewell	4,369	23.1
Warren	623	5.6
Washington	3,131	16.3
Westmoreland	1,006	12.0
Wise	4,138	26.0
Wythe	1,925	18.1
York	572	3.7

American Association of Retired Persons estimates that nationally approximately 20 percent of all mobile home residents are 60 years of age or older.

The mobile home is a relatively modern housing alternative. Such units initially appeared during the 1930s, primarily in response to the depressed economic conditions of that period. The mobile home of today, unlike its predecessor, more closely resembles site-built homes than truly "mobile" homes. Once situated, most mobile homes require a considerable amount of modification and disassembly to be transported. Disconnecting and transporting a mobile home can be a significant expense—as high as $10,000 to $15,000—to the home owner.

Another factor limiting the mobility of mobile homes is the shortage of rental lot spaces in many areas of Virginia. The market for mobile home space is tightly regulated and restricted in certain localities. Despite the fact that mobile homes are generally fixed residences, they are treated differently for purposes of land use regulation and are usually segregated from single-family residential districts. While legislation has been enacted in Virginia during recent years to limit some of the restrictions on the placement of mobile homes on individual lots in rural areas, these limitations do not apply to land use regulations on mobile home parks. Consequently, mobile home owners who rent the lot underlying their home may be forced to locate in relatively few mobile home parks in their area. The limited supply of rental lot space not only limits the home owners' choice of locations but also weakens their bargaining position in negotiating the terms of a lease. Mobile home park owners are in an almost monopolistic position regarding rental space for mobile homes in some jurisdictions.

According to the 1989 American Housing Survey conducted by the U. S. Bureau of Census, approximately 58 percent of mobile home owners in the United States rent the site on which their home is located. A large percentage of mobile homes in Virginia are also on rented lots in mobile home parks. Although no exact count of mobile home parks has been conducted for Virginia, responses to a recent survey of the Virginia Manufactured Housing Association indicate that there are over 1,000 mobile home parks in the state. The significant number of persons living in mobile home parks led the 1975 General Assembly to enact the Mobile Home Lot Rental Act (Sections 55-248.41 et seq. of the Code of Virginia), which specifies the rights and obligations of mobile home park landlords and tenants.

Many provisions of the Mobile Home Lot Rental Act are similar to or the same as provisions of the Virginia Residential Landlord and Tenant Act. A manufactured housing park tenancy, however, differs from a typical residential tenancy in that mobile home park residents generally own the dwelling structures in which they reside. These home owners would have to move not only personal property from the home, but also relocate the home itself if the tenancy at a park were terminated. The financial burden of relocating, therefore, is generally much greater for mobile home owners than for typical apartment tenants. Accordingly, legal protections needed by mobile home park residents are somewhat different from those set forth for apartment residents.

Recommendations

Following are recommendations of the Virginia Housing Study Commission pursuant to some of the more critical issues and problems relating to mobile home park tenancies in the Commonwealth.

(a) Lease Terms and Renewal

One of the more serious problems mobile home tenants have been subjected to is being compelled to accept month-to-month tenancies. Such tenancies enable park owners or operators to terminate a lease at any time during the year, requiring mobile home owners to move from the park and pay the significant costs of relocating. In addition, once a mobile home is moved into a park, tenants often have to accept frequent rent increases and changes in park rules under month-to-month leases. Current Virginia law contains no provision regarding the term of a mobile home lot lease.

The Virginia Housing Study Commission recommends amending the Mobile Home Lot Rental Act to require park management to offer all current and prospective year-round residents a rental agreement for a period of at least one year. Several other states, including Maryland, have recently enacted such statutes to protect mobile home residents from short term leases.

The Commission further recommends that additional tenant protection be provided by specifying that leases will automatically renew for a term of one year, unless a longer term is agreed to, at the expiration of the rental agreement. The park owner would be required to provide written notice of at least 60 days prior to the end of the rental agreement of any changes in the lease terms.

(b) Eviction of a Mobile Home Park Tenant

Current Virginia law allows a park owner to terminate a rental agreement "for any reason not prohibited by law" (Section 55-248.50 of the Code of Virginia). In order to protect mobile home tenants from costly and possibly unjustified evictions, as well as to preserve a park owner's ability to evict truly problem tenants, most states that have adopted mobile home park legislation have "good cause" eviction provisions.

The Virginia Housing Study Commission recommends amending the Mobile Home Lot Rental Act to limit a mobile home park owner's right to evict a tenant to the following specified actions by the tenant.

1. Nonpayment of rent.
2. Violation of the applicable building and housing code caused by a lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent.

3. Violation of a federal, state, or local law or ordinance that is detrimental to the safety and welfare of other residents in the park.

4. Violation of any rule or provision of the rental agreement materially affecting his own health and safety or that of others.

5. Repeated violation of any rule or provision of the rental agreement occurring within a six-month period.

Tenants evicted from a mobile home park often may have difficulty finding another park in which to relocate their home. Such circumstances may be the result of a limited market of mobile home park lots, the tenants' inability to pay rent, or other circumstances that led to the eviction. The Commission further recommends that the Act be amended to allow evicted tenants ninety days after judgment has been entered to relocate or to sell their home. The evicted tenant would be responsible for rent payments during this period, and to protect the landlord, the park would have a lien on the home to the extent of all rental payments due. Legislation would specify that no one may reside in the home during the period after the eviction.

(c) Fees

Another common issue facing mobile home park tenants is the imposition of various fees that are unrelated or only tenuously related to services actually provided or costs incurred by park management. Because of their relative position of bargaining strength, park owners may charge fees with little risk that tenants would move from the park or take any other action in response to the imposition of fees.

A common example of such fees are park entrance and exit fees, which typically have no relationship to any expense incurred by the park and are charged for the privilege of leasing a mobile home lot. The Mobile Home Lot Rental Act currently prohibits entrance fees as well as guest fees, fees related to cable or satellite television service, fees for interior home improvements, and commissions on mobile home sales (unless the park owner is expressly employed by the tenant). The Virginia Housing Study Commission recommends amending the Act also to prohibit exit fees, which result in a punitive charge on tenants for leaving a park.

The Commission further recommends amending the Act to protect tenants from excessive costs for utilities. Legislation would specify that a park owner who purchases any utility service from a publicly regulated utility for sale to a resident may not charge an amount that exceeds the actual amount that the utility charges the park owner.

(d) Sale of a Mobile Home

An important protection for mobile home park residents is the ability to sell their home on site and transfer the lot tenancy to the buyer. Without such protection, home owners may have to abandon their home and possibly lose any equity in the home when they move, are evicted, or are financially unable to meet mortgage or park lease payments.

The Mobile Home Lot Rental Act currently provides that "the landlord shall not unreasonably refuse or restrict the sale or rental of a mobile home located in his mobile home park by a tenant," and specifies that any discriminatory practice of restricting or refusing the sale or rental of a home because of race, color, religion, national origin, parenthood, elderliness, handicap, or sex shall be conclusively presumed to be unreasonable. Otherwise, there is no clear indication when a refusal or restriction would be deemed "unreasonable."

One of the more common reasons for refusing or restricting a sale within a mobile home park is by claiming that the home is too old. While park owners should reserve the right to restrict older homes that do not comply with federal health and safety standards or that are in extremely poor condition, they should not be permitted to restrict a mobile home sale or rental based solely on the age of the mobile home.

The Virginia Housing Study Commission recommends amending the Mobile Home Lot Rental Act to provide that the age of the mobile home shall not be the exclusive or dominant criterion for prohibiting or restricting a mobile home from being sold or rented in a park or retained in the park after the sale is consummated. The Commission also recommends that the Act be amended to provide that a park owner shall not prohibit the mobile home owner from placing a "for sale" sign on or in his home except that the size, placement, and character of all signs are subject to rules and regulations of the park.

(e) Retaliatory Conduct/Redundancy of Code Sections

When the original Mobile Home Lot Rental Act was enacted in 1975, there was no explicit provision regarding retaliatory conduct by a landlord; however, the Act did incorporate retaliatory conduct provisions from the Virginia Residential Landlord and Tenant Act (Section 55-248.36 of the Code of Virginia) by reference. In 1986, the General Assembly added Section 55-248.50 to the Code of Virginia to provide a section in the Mobile Home Lot Rental Act that specifically relates to retaliatory conduct by a landlord under a mobile home lot tenancy. The reference incorporating the Virginia Residential Landlord and Tenant Act retaliatory conduct provisions was not deleted. Therefore, given that there are redundant provisions in the Mobile Home Lot Rental Act regarding retaliatory conduct, the Virginia Housing Study Commission recommends deleting the reference to Section 55-248.39 of the Code relating to the Act.

(f) Retaliatory Conduct/Increased Protection for Tenants

The retaliatory conduct prohibition in Section 55-248.50 of the Mobile Home Lot Rental Act provides that a landlord shall not retaliate by selectively increasing rent or decreasing services or by bringing or threatening to bring an action for possession after he has knowledge that:

1. the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety;
2. the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter;
3. the tenant has organized or become a member of a tenants' organization; or
4. the tenant has testified in a court proceeding against the landlord.

It is difficult to prove subjective intent of another party, and current law in Section 55-248.50 places the burden of proof upon the tenant in establishing retaliation "as the *primary* (emphasis added) reason for termination of tenancy." In order to make more equitable an action regarding retaliation and tenancy termination, the Virginia Housing Study Commission recommends deleting the following sentence in Section 55-248.50(C)(3):

> "The landlord may terminate a rental agreement pursuant to Section 55-248.46 [relating to termination of tenancy] or for any reason not prohibited by law unless the court finds that the primary reason for the termination was retaliation."

(g) Change in Use

One of the mobile home park issues of significant concern to park residents is the possibility that the landlord will change the use of all or part of a mobile home park. The Virginia General Assembly enacted legislation during the 1991 session to amend the Mobile Home Lot Rental Act to specify that "a 120-day written notice is required to terminate a rental agreement" if the termination is due to rehabilitation or a change in use. Because state law mandates that all park residents receive such 120-day notice, no amendments to this notification requirement are recommended.

The sale of a mobile home park often results in a change of use of park property, and park owners are increasingly able to realize substantial profits by selling their land for commercial development. Some park owners have opened mobile home parks on their property only as an interim measure until the value of the land increased and the land could be sold or developed at a profit for other uses such as an office building or shopping center.

When a park operator decides to change the use of the park land or sell the land to a party intending to change its use, the result often is mass eviction of all park residents, including many long-term residents who have followed park rules and paid their rent in a timely manner for years. In addition, the closure of a park means that the shortage of park sites in that community is seriously aggravated. Hundreds of sites are eliminated while hundreds of tenants are forced to look for new sites.

At least six states have enacted statutes that require owners to offer current tenants or a tenant organization of owners within the park some form of right of first refusal to purchase the park where the land is being sold and the use of the park is to be changed. Under such arrangement, tenants have an opportunity to protect the equity in their homes and avoid costly moves required with the closing of a park, and the owner retains the opportunity to receive a fair return on his investment.

In 1992, the Virginia Housing Study Commission will continue to address the issue of change of use of mobile home parks as such change relates to tenants.

(h) Terminology

The problems often experienced by owners of mobile homes are a result of such homes not being truly "mobile." The term "mobile" home, therefore, is a generally inaccurate term and often creates a negative image for a type of housing that today bears much closer resemblance to site-built homes than earlier mobile home units that were more mobile. Consequently, there has been a tendency in recent years to replace the term "mobile" home with the term "manufactured" home. Language in the Code of Virginia has increasingly adopted the term "manufactured" home for referring to such housing units, and examples of Code references to manufactured housing include the following:

- Manufactured Housing Construction and Safety Standards Law (Section 36-88.2 et. seq.)
- Manufactured Housing Licensing and Transaction Recovery Fund Law (Section 36-85.16 et. seq.)
- Uniform Regulations for Manufactured Housing in zoning legislation (Section 15.1-486.4)
- Virginia Manufactured Housing Board (Sections 2.1-20.4 and 36-85.16).

For these reasons, and for purposes of clarity and consistency, the Virginia Housing Study Commission recommends striking all references to the term "mobile" home in the Mobile Home Lot Rental Act and inserting the term "manufactured" home.

AFFORDABLE HOUSING FINANCE

The Virginia Housing Partnership Fund: Leveraging Critical Housing Capital

The Virginia Housing Partnership Fund—and its component programs which include financing for indoor plumbing, emergency home repair, emergency shelter and transitional housing for the homeless, congregate living facilities for the elderly, disabled, and others with special needs, and homeownership assistance—has helped to position the Commonwealth as a national leader in the field of housing. By all accounts, the Fund is an overwhelming success.

In 1987, the Virginia Housing Study Commission heard in its regional public hearings of the housing crisis facing residents across the Commonwealth. While the issues varied from locality to locality, they shared a common thread of the need for a new and substantial commitment by the state to help solve housing problems. The Commission responded by proposing a bold initiative of new housing programs, including loans and grants flexible enough to meet the variety of needs across the state. This new commitment—the Virginia Housing Partnership Fund—was created and capitalized by the General Assembly in 1988.

Now, only three years after its inception, the Partnership Fund has established a solid record meeting a broad range of housing needs across the Commonwealth. From homelessness to homeownership, Partnership Fund programs have played a key role in the state's efforts to alleviate the lack of safe, decent, affordable housing. Beginning in the fall of 1988 with a core of eight programs, the Partnership Fund has moved through four funding cycles and has leveraged over $120 million for affordable housing projects in Virginia.

The Partnership Fund, jointly administered by the Department of Housing and Community Development and Virginia Housing Development Authority, has been expanded from the initial eight programs to the fourteen currently offered. Initiatives have been added in the areas of homeless prevention, indoor plumbing, and homeownership. The following summaries demonstrate the scope and impact of the Fund over the course of the last three years.

Emergency Home Repair

This program provides for small grants of up to $500 to very low income homeowners and tenants to make critical repairs of housing problems which affect the health and safety of the residents. A one for one match is required at the local level.

Amount Allocated:	$1,262,500
Amount Committed:	$1,254,239
Number of Homes Repaired:	2,300

SHARE (State Homeless Housing Assistance Resources) Shelter Support Grant

These grants are provided to emergency shelters to assist them with facility operating expenses. All shelters which have a valid certificate of occupancy are eligible to receive funds. Funds can be used to pay such expenses as rent, utilities, staff, and services. A match of equal value is required.

Amount Allocated:	$2,691,188
Amount Committed:	$2,691,188
Number of Beds Assisted:	2,000 (average annually)

SHARE Expansion Program

These funds are available in the form of both loans and grants. Loans are interest free and must be repaid over a fifteen-year term. The program is designed to create new emergency shelter beds through expansion, rehabilitation, or new construction, and to rehabilitate existing facilities.

Amount Allocated:	$6,731,481
Amount Committed and Reserved:	$5,499,410
Number of Beds Assisted:	814

SHARE Homeless Intervention Program

This three-year demonstration, begun in 1989 at the recommendation of the Virginia Housing Study Commission, assists families at risk of losing their homes avoid homelessness, and homeless families return to permanent housing. The program focuses on households experiencing a temporary problem due to circumstances beyond their control, such as layoff or illness. Assistance is limited to three months of back rent or mortgage payments and six months of future such payments. Counseling and the development of a self sufficiency plan are critical aspects of the program.

Amount Allocated:	$3.478 million
Amount Committed and Reserved:	$3.468 million
Number of Households Assisted:	2,500

Virginia Housing Partnership Fund

Program Activities by Planning District

○ Check Off
● Homeownership
□ Local Rehab
■ Shelter Support
△ Seed Money
▲ Emergency Home Repair
◇ Multi-Family
◆ Shelter Expansion
▽ Congregate
▼ Indoor Plumbing
⊠ Homeless Intervention

Seed Money For Nonprofits

With the implementation of the Partnership Fund came an increased need for the development of greater capacity among nonprofit housing developers around the state. Many regions with pressing housing needs do not have any local organizations capable of taking advantage of new state funding and implementing programs at the community level. The Seed Money Program provides up to five years of organizational funding for new nonprofit housing corporations. Total funding cannot exceed $75,000 and must be matched at an increasing rate through the fifth year.

Amount Allocated:	$1,446,360
Amount Committed:	$1,418,717
Number of Groups Funded:	31

Indoor Plumbing Program

This 1989 Virginia Housing Study Commission initiative was begun as a special effort to address the needs of rural households without indoor plumbing. Funds, available as grants and deferred loans in amounts up to $15,000 per unit, are used to install bathrooms, kitchen sinks, hot water heaters, wells, and septic systems. The program is administered through local governments, housing authorities, and nonprofits, and provides administrative funds to program operators.

Amount Allocated:	$5,572,423
Amount Committed and Reserved:	$5,455,405
Number of Households Assisted:	500

Check Off For Housing

In 1990, at the recommendation of the Virginia Housing Study Commission, the General Assembly passed legislation creating a line item on the Virginia income tax form which allows taxpayers to donate a portion of their tax return to a fund dedicated to meeting the housing needs of the elderly, disabled, and homeless. The Check Off program is administered through community groups not traditionally involved in housing programs, thereby bringing more groups into housing and increasing community awareness of housing issues.

Amount Donated:	$324,867
Amount Committed:	$324,867
Number of Projects Funded:	36

Multi-Family Loan Program

This program is the largest of the Partnership Fund programs, reflecting the priority placed upon the rehabilitation and construction of affordable rental housing. Interest rates range from two to eight percent, and loans are due in fifteen years. The maximum assistance per project is $1 million. Projects have ranged in size from two to 250 units. Acquisition, rehabilitation, and new construction are eligible uses. Normally, Partnership Fund monies provide gap financing in conjunction with first mortgages from other sources, including bond financing through VHDA.

Amount Allocated	$41,517,230
Amount Reserved and Committed:	$39,348,594
Number of Units Assisted:	4,809 units in 79 projects

Congregate Loan Programs

Many frail, elderly Virginians, as well as those with physical and mental disabilities, require special housing. Often, the most suitable housing is small scale, shared housing which provides necessary services as well as affordable rents. The Congregate Loan Program seeks to meet this need. The program provides loans for 20 years at interest rates ranging from two to eight percent. The maximum assistance per project is $250,000. Homes for adults and group homes are common project types. During the past year, emphasis has been placed on the retrofit of sprinklers in homes for adults and other congregate facilities.

Amount Allocated:	$5,235,736
Amount Reserved and Committed:	$4,734,853
Number of Beds Assisted:	846 beds in 41 projects

Local Housing Rehabilitation Program

This program is the second largest of the Partnership Fund initiatives, and reflects not only the emphasis on housing rehabilitation, but also the principle of local administration. These funds are administered through local governments, redevelopment and housing authorities, and nonprofits. They are frequently combined with other housing rehabilitation efforts at the local level, and used in conjunction with Community Development Block Grant funds. Assistance may be for up to $17,500 per unit and is provided in the form of low interest loans and grants. Over forty agents are involved in the administration of this program. Eligible properties include single family, owner occupied and small rental properties of up to ten units.

Amount Allocated:	$20,760,100
Amount Reserved and Committed:	$19,954,860
Number of Units Rehabilitated:	over 2,000

Homeownership Assistance

This program is targeted toward families otherwise unable to afford the purchase of their own home, frequently because of their inability to save the necessary down payment and closing costs. The Partnership Fund provides down payment assistance loans, usually in conjunction with VHDA/FHA first mortgages. The program can also provide first mortgages in cases where bond financing is not feasible, as well as second mortgage gap financing to achieve a more affordable payment. The program has also been used to make lease-purchase loans where applicants may need to participate in intensive counseling and homeownership preparation programs prior to qualifying for a loan. Three percent loans are available for up to fifteen years.

Amount Allocated:	$11,160,000
Amount Reserved and Committed:	$10,800,430
Number of Households Assisted:	over 2,000

In addition to the programs listed above, the overall Partnership effort also provides federal housing assistance through the following programs:

Federal Shelter Grants

Permanent Housing for the Handicapped Homeless

Weatherization Assistance Program.

Recommendation

As originally established, the Virginia Housing Partnership Fund was designed to be self-sustaining within ten to thirteen years if capitalized with an annual appropriation of some $20 million. In the 1991-92 biennium, however, the bulk of Partnership Fund revenues — $38 million — was removed from the state General Fund budget and included among those projects which would, given available revenues, be funded through Virginia Lottery proceeds.

Then, to address the unprecedented state budgetary shortfall in the current biennium, those Lottery proceeds which would have been allocated to the Partnership Fund were allocated instead to other programs. In turn, the Virginia Housing Development Authority provided a $38 million line of credit to allow for the ongoing operation of 1991-92 Fund programs. While the VHDA Board of Commissioners has indicated that the present line of credit will remain in place, members have also stated that fiscal projections indicate an inability on the part of the Authority to duplicate the line of credit for the 1993-94 biennium.

The Virginia Housing Study Commission has recommended that, to the extent funds are available, there be full funding of the Virginia Housing Partnership Fund in the 1993-94 biennial budget for the Commonwealth, and that the Partnership Fund be one of the highest priority funding items therein. The Commission has also indicated that, should there not be adequate General Fund revenues available to capitalize the Partnership Fund, then the Fund should be supported through other means of financing. The Commission is currently reviewing a variety of such alternative financing mechanisms. The Virginia Housing Study Commission pledges its ongoing support to make every effort to ensure the continuation of the Virginia Housing Partnership Fund.

Historic Properties: Revitalizing Affordable Housing

The shortage of safe, decent and affordable housing for lower income individuals and families continues to be one of the major housing problems in many areas of the Commonwealth, and the production of such housing either through new construction or renovation of existing structures is very limited. The lack of adequate private market incentives for encouraging low income housing development results in the demand for such housing either being unmet or satisfied primarily through governmentally assisted housing projects.

During the past year housing construction activity has slowed considerably; however, new residential construction continues primarily in middle and upper income suburban neighborhoods. Rehabilitation and renovation work also usually targets commercial or higher income housing uses. These factors indicate that even in a relatively inactive real estate market, incentives are insufficient to spur private sector investment into low income housing development.

One of the existing potential sources of housing for lower income households is older or historic buildings that are currently underutilized or vacant. The rehabilitation of such structures for low income housing would preserve historically significant buildings, revitalize historic districts and neighborhoods, and create new housing opportunities within such neighborhoods for low income residents.

Federal tax credit incentives encourage rehabilitation expenditures on older and historic buildings, and federal and state tax credits have been authorized for the production of low income housing. The Commonwealth could provide additional financial incentives for the rehabilitation of older or historic buildings for low income housing by establishing a state rehabilitation tax credit to be used in conjunction with the federal rehabilitation credit. Provided adequate financial incentives and information on existing federal and state tax benefits, property owners of older or historic buildings may find that the rehabilitation of their property for low income housing would be a feasible and profitable project.

The preservation of historic properties and districts and the provision of low income housing are goals of the nation as well as of the Commonwealth, and legislation has been enacted by both the United States Congress and the Virginia General Assembly to promote such goals.

Monticello Vista, a 1920s shirt factory undergoing rehabilitation by the Charlottesville Housing Foundation for conversion to housing for elderly and disabled residents. The Commission's proposed tax credit program is designed to foster the revitalization of similar properties for reuse as low income housing.

Federal Legislation and Programs

Federal law contained in the Internal Revenue Code of 1986, as amended, allows income tax credits for both the rehabilitation of older or historic property and the provision of low income housing. Federal law allows both credits to be used for the same project if the project preserves an older or historic structure and creates new low income housing units.

(a) Tax Credits for Rehabilitation of Older and Historic Buildings

For almost a century, the rehabilitation and preservation of historic structures and neighborhoods has been strongly favored by federal policy. Federal tax laws, however, included no incentives for historic preservation until 1976.

When Congress determined that tax incentives and disincentives were needed to encourage developers and owners not to demolish their buildings, the Tax Reform Act of 1976, which included a rehabilitation tax credit, generated building renovation and dramatically increased the interest in preservation by developers previously oriented toward new construction. The Department of the Interior estimates that tax incentives had helped spur $1.8 billion in rehabilitation work by 1981. This amount rose to over $12 billion of private funds invested by the end of 1987.

Current provisions of the Internal Revenue Code provide a two tier system: a 20 percent credit for qualified rehabilitation expenditures for certified historic structures, and a 10 percent credit for such expenditures for buildings that are not historic and were first placed in service prior to 1936.

To qualify for the credit, the rehabilitation expenditures must be "substantial," that is, exceeding the larger of $5,000 or the adjusted basis of the building during any 24-month period selected by the taxpayer.

A structural walls test also must be met to qualify for the credit. Under this test, at least 75 percent of the existing external walls must be retained in place as either external or internal walls, and at least 50 percent of the external walls must be retained as external walls. At least 75 percent of the internal structural framework of the building must also remain in place. This rule is meant to deny the credit to taxpayers who gut a building. Historic structures are "certified" by being (1) listed in the National Register, or (2) located in a registered historic district and certified by the Secretary of the Interior as being of historic significance to the district. A registered historic district is one listed in the National Register or designated as such under state or local law. Nonhistoric structures must have been placed in service prior to 1926, and any additions made to the building after 1935 are not part of the qualified building. Thus, any rehabilitation expenditures related to such additions will not qualify for the credit.

(b) Tax Credits for Low Income Housing

The Tax Reform Act of 1986 created a new federal income tax credit for providing low income housing. The credit is restricted to those expenditures directly related to the production of low income housing units and related common areas. Unlike previous federal housing incentives, the low income housing credit can be applied to low income housing acquisition, rehabilitation, or new construction. For renovation projects, the low income housing credit can be used in conjunction with the rehabilitation tax credit for historic structures.

The credit is available for ten years at a maximum rate of nine percent per year of qualifying rehabilitation or new construction costs attributable to each unit of low income housing. A credit of up to four percent per year is provided for costs attributable to the acquisition of low income housing units or the rehabilitation or new construction of such units where the project received below-market federal loans or was financed with tax exempt bonds. To qualify for the tax credit for rehabilitating low income housing, the rehabilitation must be "substantial:" the expenditures attributable to rehabilitation must equal at least $2,000 per low income unit.

The developer of a qualified project must irrevocably elect a minimum rental set-aside requirement at the time the project is placed in service, which provisions must be complied with throughout a 15-year period. There are credit recapture provisions for projects that do not comply with the set-aside provisions for the 15-year period.

Projects qualify for the credit if 20 percent or more of the residential rental units are occupied by individuals with incomes of 50 percent or less of area median income, adjusted for family size, or 40 percent of the residential rental units are occupied by individuals with 60 percent of median income.

The gross rent paid by families in low income units may not exceed 30 percent of the applicable qualifying income for a family of its size.

The federal low income housing tax credit program is currently scheduled to sunset June 30, 1992. However, housing advocates are hopeful that a program extension will be part of a tax bill introduced in Congress in early 1992.

Several low income housing rehabilitation projects in Virginia have been made feasible by the federal tax credit programs. Such projects include the 1990 rehabilitation of the Highland Park School and the 1986 rehabilitation of the Randolph School, both in Richmond. Federal tax credits for rehabilitation and for low income housing fostered completion of both projects.

Despite encouragement at both federal and state levels for the preservation and rehabilitation of older and historic properties, many such properties in Virginia remain in deteriorating condition or vacant. Demolition of such structures for new development not only deprives neighborhoods of their cultural, architectural, and historic integrity, but also eliminates buildings that could have been rehabilitated to provide affordable housing for area residents.

State Legislation

The provisions of current Virginia legislation clearly indicate that both the preservation of historic sites and the creation of affordable housing opportunities for low income households are important goals of the Commonwealth. However, legislation to accomplish each goal has been enacted in isolation of the other goal. There is currently no state legislation or incentive that specifically targets the rehabilitation of historic buildings for affordable low income housing.

(a) Preservation of Historic Sites

The Virginia enabling statute for preservation of historic sites and districts by counties and municipalities is Section 15.1-503.2 of the Code of Virginia. Under this section, a locality may adopt an ordinance protecting local historic resources and may provide for an architectural review board (ARB) to administer the ordinance. The ARB determines the propriety of designs for new construction within the district and decides whether existing buildings or structures may be altered or demolished. The statute also grants the local government the authority to exercise eminent domain to acquire historic landmarks or areas.

The locality designates historic resources to be protected, then accomplishes that protection by delineating districts encompassing the resources. The resources may be individual historic landmarks or broader "historic areas." Individual landmarks may be those identified by the Virginia Historic Landmarks Board or "any other buildings or structures within the county or municipality having an important historic, architectural or cultural interest."

Historic areas include buildings or places "having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community." Such areas need not contain individually significant buildings or structures as long as the area, taken as a whole, is architecturally or culturally significant to the locality.

In 1987, Governor Gerald L. Baliles established the Governor's Commission to Study Historic Preservation to ensure that "Virginia is back in the forefront of our nation's historic preservation efforts." Among the findings of the Commission was a need for increased state financial support and incentives to encourage preservation efforts.

(b) State Low Income Housing Tax Credit

Legislation was enacted by the 1989 General Assembly to establish a state low income housing tax credit program (Sections36-55.63 and 58.1-336 of the Code of Virginia). This program, recommended by the Virginia Housing Study Commission, provides that persons placing low income housing units (including those in rehabilitated historic structures) in service on or after January 1, 1992, may be eligible for a credit against their state income tax. The Virginia Housing Development Authority is responsible for determining the amount of the credit allowable and the terms and conditions for qualifying for the credit. The total maximum amount of state low income housing credits for any calendar year is $3.5 million.

Several possible approaches could foster the preservation of historic properties while increasing affordable housing opportunities for lower income households. New state financial incentives could be established that would specifically target the development of low income housing as the primary use of a rehabilitated historic structure, thereby countering concern that such revitalization would result in gentrification and substantial increases in property values and the cost of housing within the neighborhood. An effort should also be made to increase awareness of existing federal and state tax benefits, and the positive results of rehabilitation of older and historic buildings for low income housing.

Recommendations

The Virginia Housing Study Commission recommends the establishment of a state income tax credit program for expenditures incurred by a taxpayer to rehabilitate older or historic structures for low income housing. The program would be enacted during the 1992 Virginia General Assembly Session with an effective date of January 1, 1993. Such time frame would allow adequate opportunity for the development and implementation of program rules and regulations, development of forms and record keeping systems, and assignment of staff to administer the program. No more than $500,000 in tax credits would be available under the program for any calendar year. If a tax credit of 20 percent of qualified rehabilitation expenditures

were allowed, for example, $500,000 in tax credits could generate $2.5 million in private investment for preservation and low income housing projects in Virginia.

The state program could be modeled after the federal rehabilitation credit program, but would be available only for rehabilitation work directly related to providing low income housing units. The program could specify that in order to be eligible for the state tax credit, the project must qualify for the federal rehabilitation credit. Definitions for low income housing as well as requirements for low income housing compliance periods and credit recapture provisions could be similar to those used in the federal low income housing tax credit program. Such requirements and definitions have been also incorporated into the state low income housing tax credit program.

The Housing Study Commission also recommends that the Department of Housing and Community Development and the Department of Historic Resources, in collaboration with the Preservation Alliance of Virginia and the Virginia Housing Coalition, develop and provide training in 1992 on opportunities and financial incentives for the rehabilitation of older and historic buildings for low income housing. Commission staff will work closely with the collaborating agencies on this project.

Tax Credits: Encouraging Rent Discounts

In its 1989 Annual Report, the Virginia Housing Study Commission recommended the establishment of a state tax credits program encouraging landlords to reduce rents for low income elderly or disabled tenants. The program, believed to be the first of its kind in the nation, was subsequently approved by the 1990 Virginia General Assembly and became effective for taxable years beginning on or after January 1, 1991.

The program is capped at $1.0 million in tax credits per fiscal year. The amount of the tax credit is 50 percent of the rent reduction, which must be at least 15 percent of the rents charged to other tenants for comparable units *in the same property.* Because the Code of Virginia currently requires the use of rents for comparable units in the same property, the credit is available only to owners of rental housing developments containing more than one unit of the same size and type. For example, a single family residence is not eligible because there are no other units in the same property. Also, a multi-unit building containing different types of sizes of units is not eligible. The current requirement that comparable units be in the same property has resulted in the ineligibility of certain types of property, particularly in rural areas of the state where units in large multi-family developments are not readily available.

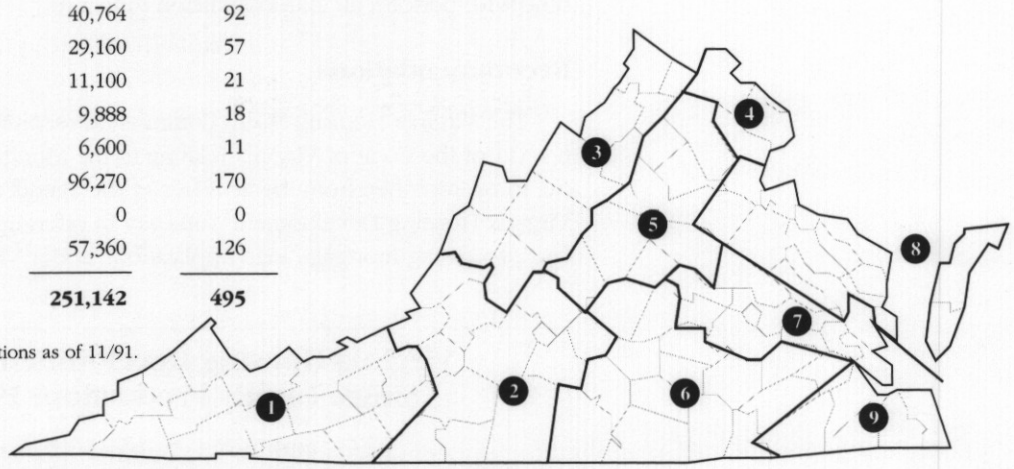
Recommendations

The Virginia Housing Study Commission recommends amending Section 58.1-339 of the Code of Virginia to provide that, where there are no units in

1991 State Tax Credits Program for the Elderly and Disabled

Allocation Area	Amount Allocated	Amount Reserved	Units Reserved
1	$ 107,900	0	0
2	120,900	40,764	92
3	67,000	29,160	57
4	209,800	11,100	21
5	47,000	9,888	18
6	52,200	6,600	11
7	126,800	96,270	170
8	51,500	0	0
9	216,900	57,360	126
	$1,000,000	**251,142**	**495**

Note: Data based on Reservations as of 11/91.



the same property comparable to a unit to be leased to an elderly or disabled tenant, use of rents for comparable units in the same market area will be permitted in determining eligibility for tax credits for rent reductions provided to low income elderly and disabled tenants.

VHDA Field Originators: Serving Rural Virginians

To serve rural Virginians more effectively, Virginia Housing Development Authority has approved the use of "field originators" to accept loan applications on its behalf. Such field originators could include financial institutions, mortgage brokers, local governmental agencies, nonprofit organizations, and other qualified entities and individuals. The VHDA has been advised by the State Corporation Commission that field originators would be required to obtain a license under the Mortgage Lender and Broker Act unless they are otherwise exempt from its provisions. Financial institutions (such as banks, savings institutions, and their subsidiaries) and local governmental entities are generally exempt from the Act, and a mortgage broker typically would obtain a license prior to becoming a field originator. However, other individuals and entities not exempt or not previously licensed would be required by the Act to obtain a license.

The imposition of this licensing requirement would impede the ability of VHDA to obtain the services of field originators because the financial and administrative burden on the individual or entity would be considerable. There is virtually no risk or harm to the public from providing an exemption

from the Act for VHDA field originators because their responsibilities will be limited to accepting applications, assisting applicants in completing forms, and forwarding the applications to the Authority. The VHDA staff will underwrite the applications, provide all requisite loan disclosures, and otherwise perform all loan origination functions.

Recommendations

The Virginia Housing Study Commission recommends amending Section 6.1-411 of the Code of Virginia relating to the Mortgage Lender and Broker Act to exempt therefrom the activities of the agents and representatives of Virginia Housing Development Authority in offering, accepting, completing, and processing mortgage loan applications under VHDA's programs.

Virginia Housing Development Authority Single Family Production: 1974-1991

Planning District	(1990) % of State Population	Actual Loan Production	% of Total Loans Made
1	1.50	133	.21
2	2.00	73	.12
3	2.90	713	1.11
4	2.50	1,370	2.16
5	4.10	3,177	5.00
6	3.60	1,648	2.60
7	2.60	1,113	1.76
8	23.70	11,919	18.82
9	1.90	423	.67
10	2.70	1,325	2.10
11	3.30	2,849	4.50
12	3.90	2,777	4.40
13	1.30	252	.40
14	1.40	131	.21
15	12.00	14,593	23.00
16	2.80	2,309	3.70
17	0.60	131	.21
18	1.20	951	1.50
19	2.50	2,086	3.30
20	16.40	10,194	16.10
21	6.50	5,133	8.10
22	0.60	22	.03
	100.00	63,322	100.00

Housing Affordability Impact Statements: Assessing Regulatory Costs

It is widely recognized that state laws, local ordinances, and regulations enforced by all levels of government can affect the cost of housing, and there is continuing concern that the full impact of many governmental actions upon housing costs may not be considered adequately before their enactment or implementation.

In a report released in July, the Federal Advisory Commission on Regulatory Barriers to Affordable Housing suggested that federal agencies promulgating major rules be required to prepare a Housing Impact Analysis. The analysis would "discuss, in depth, the projected impact of the rule on housing and land costs, supply, and demand; alternatives that were considered; and possible actions the agency could take to ameliorate any negative impacts." The Commission further suggested that such an approach could also serve as a model for state and local governments.

Six months prior to the issuance of the federal report, the Virginia Housing Study Commission had in its 1990 Annual Report reaffirmed its keen interest in the relationship of governmental regulations and housing costs, and indicated its intent in 1991 to study the feasibility and desirability of requiring statewide and/or local housing affordability impact statements prior to the passage of such regulations, fees, or other requirements which affect the cost of housing. Because the nature of an affordability impact assessment varies according to the level of government at which it occurs and whether it takes place as part of the administrative or legislative process, the Commission divided its study of the issue into three sections: two covering impact assessment at the state level and a third covering local legislative impact assessment.

I. Increasing Awareness of Housing Affordability in the Virginia State Legislative Process

There is currently no formal pre-enactment assessment requirement for Virginia legislation potentially affecting the cost of housing. In fact, formal pre-enactment impact assessment is required in few specific circumstances. Legislation proposed by state government agencies goes through an internal review at the Department of Planning and Budget designed to identify programmatic and fiscal impacts. Also, the provisions of Virginia Code Sections 30-19.03 require the Commission on Local Government to prepare an estimate of the additional expenditures localities might incur as a result of the passage of legislation requiring new or expanded governmental services.

And, under Code Sections 30-19.04 and 30-19.05, legislation proposing property or retail sales and use tax exemptions must undergo formal scrutiny beyond that accorded most legislation, and must be introduced on the first calendar day of each General Assembly session. In the case of property tax exemptions, the General Assembly will not consider the proposal until the affected local government has passed a resolution supporting or refusing support for the proposed exemption. The resolution may be passed only

after a public hearing and the consideration of eight items specified in the Code. Patrons of bills proposing a retail sales and use tax exemption must provide the General Assembly with specific information on the effects and circumstances of the exemption being sought.

Although formal, pre-enactment impact assessment procedures could help assure a more thorough understanding and review of the possible consequences of legislation affecting affordable housing, time constraints during the legislative session, the quality of analysis required, the availability of relevant data, the appropriate agent to prepare an impact assessment, and the legislative topics subject to review must be taken into account before enacting legislation requiring such assessments.

- If legislation is subject to an impact assessment only after its introduction, *a limited time for review* will be available. Bills must be passed in the house of introduction within a few weeks of the opening of each session and speedy committee action is required. The Commission on Local Government aims for a ten-day turnaround period for its fiscal impact analyses, allowing cooperating localities only forty-eight hours to respond with individual comments, assessments, or estimates.

- *Requiring patrons to submit an impact assessment with a bill* might ease time constraints substantially. As in the case of bills proposing a retail sales and use tax exemption, the patron of a bill affecting housing could be required to provide an assessment of the circumstances and probable impact of the bill prior to committee consideration.

- Data constraints and the nature of the issues associated with affordable housing may mean that impact assessments are more problematic than conclusive, for estimating the actual costs and benefits resulting from regulations affecting housing has always been a difficult technical task. The issue may be the practical *difficulty of producing an estimate of impacts that is technically valid* yet persuasive in a political environment.

- Attention should also be given to deciding *which legislation should be subject to a housing affordability impact analysis.* Bills in any number of areas may have an indirect effect on housing affordability. However, a handful may account for the greater proportion of potential impacts. The Commission on Local Government concentrates its review on legislation with broad potential impacts, and conducts its impact assessment for only about a dozen bills annually. In the 1991 session, 1,300 bills were introduced in addition to those carried over from the preceding session. Perhaps forty to fifty of them had potentially significant effects on housing affordability—most through the indirect consequences of changes in land use law or development regulations.

  Because land and finance, among all housing cost components, have experienced the most significant inflation in recent years, it might be

appropriate to limit the impact assessment to these areas. Another alternative to consider, therefore, is for the legislature to require by rule or statute that all bills either amending existing Code sections or creating new ones should be accompanied by a statement of intended purpose and likely economic consequences.

- *The designation of an agency* or agencies responsible for identifying legislation subject to a housing affordability impact assessment and also for conducting or coordinating the assessment is another important concern. Title 30 of the Code sets forth three different methods for identifying and considering the effects of legislation depending upon the topic of a given bill. In each case a different party is responsible for the required analysis.

  In the first case, when the Division of Legislative Services identifies legislation it has drafted as potentially increasing local government expenditures, it notifies the Commission on Local Government, which then prepares an analysis. In the second, simply referring a property tax exemption bill to a legislative committee triggers an automatic local process designed to illuminate the circumstances of the exemption. In the third case, the patrons of bills calling for an exemption from the retail sales and use tax are responsible for providing key information to the appropriate legislative committee before the bill can be considered.
  In the case of housing affordability, a legislative impact analysis would have to be not only timely, but also sufficiently authoritative or impartial in its nature to be useful. Otherwise the impact analysis rather than the legislation itself might become the focus of debate.
  The Virginia Housing Study Commission considered the possibility of assigning the Division of Legislative Services (DLS) the task of identifying bills from Code Titles 15.1, 36, and 55 (regulations with the most significant potential impacts on housing affordability—including local land use regulations, principal building regulations, and real property laws—are found in these Titles) for analysis. The Commission also considered the following alternatives for developing the impact statement:

- Allow legislative committee chairmen to require that bills identified by DLS as needing a housing affordability impact statement cannot be taken up by the committee until the patron has provided essential supporting documentation, including an estimate of the approximate costs and benefits of the legislation, the number of persons or entities likely to be affected, and the administrative costs associated with the proposal, and an explanation of the methods by which the estimates were prepared.

- Require the Division of Legislative Services to prepare, for each identified bill, a statement similar to that described above within ten days of the introduction of the bill.

- Require that identified bills be referred to the Housing Study Commission for the preparation of an impact analysis during the calendar year for reconsideration at the next General Assembly session, thereby allowing time for thorough analysis.

II. Increasing Awareness of Housing Affordability in the Virginia State Regulatory Process

A review of the impact of proposed new or revised regulations is incorporated into the public participation section of the Administrative Process Act (Title 9, Chapter 1.1:1 of the Code of Virginia). Any covered agency promulgating a regulation must provide the Registrar of Regulations a statement for publication including the estimated impact of the regulation in terms of the number of persons affected and the projected implementation and compliance costs. (During the 1991 Session of the General Assembly, House Bill 1969 and a substitute bill reported out of the Committee on Conservation and Natural Resources proposed amending various sections of the Administrative Process Act to require a more explicit statement and consideration of the economic costs and benefits as part of the administrative review of proposed regulations. The General Assembly did not pass the bill.) Although such statement is a limited basis for considering possible impacts of pending regulations, it increases public awareness of those impacts, permits a more informed response to proposed rules and regulations, and requires the regulating agency to consider the likely consequences of its proposed regulations.

Reinforcing the provisions of the Administrative Process Act as they relate to affordable housing could be an alternative or supplement to introducing an assessment of housing affordability during the legislative process. Such action would parallel the recommendation of the federal Advisory Commission on Regulatory Barriers to Affordable Housing. The Commission proposed grafting a Housing Impact Analysis onto Executive Order 12291, which requires impact analysis of most federal regulations.

The Virginia Housing Study Commission considered recommending amendments to the Administrative Process Act to mandate a housing affordability impact analysis targeting the costs and benefits of any regulation that could produce substantial increases in housing costs. Such analysis could be mandated to include:

- A description of the potential direct and indirect beneficial effects of the proposed rule or regulation on housing or land costs, including benefits that can be quantified in monetary terms as well as those that cannot, and the identity of both groups and individuals likely to receive the benefits;
- A description of the potential direct and indirect costs of the proposed rule or regulation affecting housing or land costs, including those benefits that can be quantified in monetary terms as well as those that

cannot, and the identity of both groups and individuals likely to bear the costs;

- A determination of the net impact of the rule or regulation on housing affordability, based on the analysis of benefits and costs; and
- A description of any alternative regulatory approaches that could achieve the desired regulatory goal at a lower cost, an analysis of the benefits and costs of any alternative, and the reasons why such alternatives were not adopted;

In addition, the Administrative Process Act could mandate that a summary of the housing affordability impact analysis be submitted to the Registrar for publication in the Virginia Register.

III. Increasing Awareness of Housing Affordability in Virginia Localities

The state's key local enabling legislation in areas such as land use regulation, utilities, and housing typically has not required localities to consider the potential affordability impacts of local ordinances adopted in accordance with statutes. Although public hearings are required prior to most significant local actions affecting land use or other fundamental government regulations, there is no requirement prescribing what information or factors should be presented to the public or the governing body for consideration. A housing affordability impact statement could assure a more thorough examination of the effects of local legislation and encourage more uniformity in the local legislative process.

The Virginia Housing Study Commission considered the following substantive, procedural, and practical concerns in discussing local affordability impact statements.

- A local impact assessment requirement should not become simply *another state government mandate on localities* increasing both the cost and time burdens imposed on local government and, indirectly, on residents and those subject to local governmental regulation. Conversely, the impact analysis should not be a meaningless exercise, recognized as empty and therefore easily circumvented.
- There is question as to whether the affordability impact assessment requirement should apply only to provisions of *locally adopted ordinances or to discretionary decisions* made in connection with an ordinance. For example, in the case of a local zoning ordinance, the impact statement requirement would be expected in connection with general provisions, administrative requirements, and district regulations. But would a similar statement be required in the case of a request for rezoning a given site? Overuse of the concept could simply slow the development review process further, producing a result opposite to that

originally intended. (The Commission on Regulatory Barriers advised against requiring impact statements for individual projects.)

- The *number and types of localities subject to an impact assessment* requirement is an important consideration. In smaller and slower growing localities with little or no professional staff available to prepare analyses, Regional Planning District Commissions might be able to provide the impact analysis. Further, lack of affordability is attributable to different sets of causes in different regions. Rapidly growing communities face high demand-related housing costs that may be exacerbated by regulatory delay or unnecessarily stringent requirements. In many slower growing communities lack of affordability may be attributable more to income deficiencies than to inefficiencies in housing production resulting from excessive regulation.

- The *content of an impact statement and the method used* to determine the probable degree of impact are both important considerations. The content could be similar to that proposed for the legislative impact statement, that is, an estimate of the approximate costs and benefits of the legislation, the number of persons or entities likely to be affected, the administrative costs associated with the proposal, and an explanation of the methods by which the estimates were prepared. The means for developing the statement could also be prescribed in any proposed amendments to legislation.

The Commission considered two alternatives for amending state enabling legislation to grant localities authority to establish a process for assessing the impact of proposed local regulations upon affordable housing. The first would limit the requirement for an impact assessment to locally-adopted land use regulations. This alternative would provide coverage for the majority of significant regulatory factors, including changes such as impact fees, alterations in local proffering ordinances, and revised subdivision standards that affect housing costs.

The second alternative would impose a blanket requirement for the preparation of an affordability impact statement in connection with any local action potentially affecting the affordability of housing. Despite its broader scope, it might entail a substantially greater administrative burden upon localities without reducing the regulatory burden on affordable housing to a significantly greater extent than the first alternative.

Recommendations

The Virginia Housing Study Commission remains concerned about the affect of local and state governmental regulations on the affordability of housing across the Commonwealth. Further, the Commission is of the opinion that assessing the impact of such regulations is one of the most challenging issues facing affordable housing advocates.

In its deliberations on the regulatory and legislative options presented above, the Commission agreed that the material prepared and reviewed to date should be made available to the Joint Legislative Audit and Review Commission (JLARC) currently studying the Administrative Process Act. In addition, the Housing Study Commission will continue to refine legislative options in anticipation of introducing initiatives during the 1993 Virginia General Assembly Session. The Commission reaffirms its assertion that legislation designed to mandate impact assessments of governmental regulations on housing costs could play a critical role in helping to ensure safe, decent affordable housing for every Virginian.

Additional Issues

Comprehensive Housing Affordability Strategy (CHAS)

In 1991, the Virginia Department of Housing and Community Development, in cooperation with the Virginia Housing Development Authority, drafted the Comprehensive Housing Affordability Strategy (CHAS) for the Commonwealth of Virginia as required by the National Affordable Housing Act of 1990. The DHCD convened meetings of four advisory groups and five regional workshops in its preparation of the draft state CHAS, and solicited public comment on such draft prior to submitting the final FY 1992 CHAS to the U. S. Department of Housing and Urban Development.

The Virginia Housing Study Commission was represented by its Executive Director at all CHAS advisory group meetings and regional workshops. In addition, the Commission submitted comments on the draft CHAS.

In sum, the Commission applauds the CHAS mission statement asserting that housing is a basic need of all Virginians. Since its creation in 1970, the Commission has advocated safe, decent affordable housing for every Virginian.

The Commission additionally concurs with the eleven broad CHAS goals. Most of the stated goals—such as those related to housing the homeless, the elderly, and the disabled; Fair Housing; creating adequate affordable rental and homeownership opportunities; educating Virginia residents to the need for affordable housing; encouraging cooperation among federal, state, and local governments to promote affordable housing; and creating a public policy and regulatory framework designed to minimize barriers to and foster the preservation and production of affordable housing—have also been identified by the Commission in its annual reports as documented needs in the Commonwealth.

The CHAS sets forth 50 specific strategies to meet its eleven stated goals. The Commission assisted in prioritizing such strategies based on implementation time frames ranging from one year to five years.

The Commission is identified as the lead agency in implementing thirteen strategies, and as a participating agency in ten others. The Commission will take the lead on strategies relating to the Virginia Housing Partnership Fund; the Community Reinvestment Act; regulatory barriers to affordable housing development; state land use policies; and housing affordability assessments.

Growth Management and Affordable Housing

The Virginia Housing Study Commission in 1991 continued its advocacy to ensure that housing affordability issues are addressed by the Virginia Commission on Population Growth and Development (the Growth Commission), and that housing affordability provisions become an integral part of any growth management system proposed for adoption in the Commonwealth.

The Growth Commission adopted fourteen "findings" in March 1991, including the following:

> Housing prices in many localities are out of reach of low and moderate income families . . . The search for affordable housing often drives home buyers far from their . . . employment . . . accelerat[ing] sprawling development and compound[ing] public, economic, and environmental costs.

Subsequently, in a policy paper issued in September 1991, the Growth Commission included among its ten proposed state planning goals this goal:

> Provide a framework for the development of affordable housing in all localities throughout the Commonwealth.

In 1992, the Virginia Housing Study Commission will continue to work in close cooperation with the Growth Commission, particularly in addressing those planning and land use issues which affect the cost of housing.

Manufactured Housing Licensing and Transaction Recovery Fund Act

The Virginia Housing Study Commission successfully introduced landmark comprehensive consumer protection legislation before the 1991 Virginia General Assembly to establish a manufactured housing licensing and transaction recovery fund. The Commission will introduce several "housekeeping" amendments before the 1992 General Assembly to clarify current language in the Act prior to its effective date of July 1, 1992.

Mandatory Seller Disclosure

At the request of the Virginia Association of Realtors, the Virginia Housing Study Commission in 1991 considered the Association's support for 1992 Virginia legislation mandating seller disclosure of material facts relative to a residential property. Under such mandate, the seller would not be required to disclose to potential purchasers information as to whether the occupant of the property was infected with AIDS or any other disease determined to be highly unlikely to be transmitted through the occupancy of a dwelling place. Neither would a seller be mandated to disclose whether the property was the site of a homicide or other felony, or a suicide.

The National Association of Realtors has recommended that all state Realtor Associations adopt a mandatory seller disclosure policy. Only one state other than Virginia (Alabama) relies on the *caveat emptor* ("buyer beware") statute regarding disclosure of material facts regarding a property.

The Virginia Housing Study Commission has expressed interest in mandatory seller disclosure relating to residential properties, and has requested that the Virginia Association of Realtors provide additional information on the concept and specific legislative provisions for its implementation.

SJR 204: VIRGINIA CONDOMINIUM ACT

Senate Joint Resolution 204, passed by the 1991 Virginia General Assembly, directed the Virginia Housing Study Commission to study the provisions of the Virginia Condominium Act as they relate to the operation and management of condominium unit owners associations. The Virginia Condominium Act was originally enacted in 1974 at the recommendation of the Housing Study Commission.

In studying the codified provisions, the Commission held regional public hearings and solicited written comments on the issues. A Commission Subcommittee included broad representation and a geographic cross section of persons involved in condominium unit development, management, financing, operations, regulation, and governance.

The overall issue considered by the Commission was whether specific issues related to the operation and management of condominium unit owners associations should be legislated in detail or left, within parameters of public policy, to the drafter of documents for each individual condominium. Specific issues considered by the Commission were developed from legislation introduced in the 1990 and 1991 Sessions of the Virginia General Assembly, from testimony presented at the above referenced public hearings, and from written correspondence received by the Commission. Because of the relative complexity and specificity of the issues discussed at length by the Commission, this report will serve to highlight such issues, as well as Commission recommendations pursuant to the same.

A. Association Books and Records

1. *Issue*: Whether the list of association records subject to disclosure in Sections 55-79.74:1 and 55-79.75 of the Condominium Act should be revised to be consistent with similar provisions of the Property Owners' Association Act (Section 55-510C).

   Issue: Whether the charge (reasonable cost not to exceed $1.00 per page) established in Section 55-79.74:1 of the Condominium Act for copies of association records is excessive.

   Recommendation: Amend the Condominium Act provisions (Sections 55-79.74:1 and 55-79.75), and correlative provisions of the Property Owners' Association Act (Section 55-510C) to provide that:

   a. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that the records concern:

      1. Personnel matters or a person's medical records;

      2. Communications with legal counsel or attorney work product;

3. Transactions currently in negotiation and agreements containing confidentiality requirements;

4. Potential or pending litigation;

5. Pending matters involving enforcement of the association documents or rules and regulations or any architectural guidelines promulgated pursuant thereto;

6. Disclosure of information in violation of law; or

7. Meeting minutes or other records of an executive session of the executive organ held pursuant to subsection B. of Section 55-79.75.

b. The unit owners' association may impose and collect a charge, reflecting the actual costs of materials and labor, prior to providing copies of any books and records to a member in good standing under this section.

2. *Issue*: Whether association financial records, should be kept on the premises and available at any time to unit owners instead of in the management agent's office off site.

Recommendation: No legislative action needed at this time.

B. Board of Directors Meetings

1. *Issue*: Whether additional notice requirements for notifying unit owners of Board of Directors meetings should be mandated in statute.

2. *Issue*: Whether the authority of the board to meet in closed, executive session should be restricted by statute.

3. *Issue*: Whether the statutory quorum minimum (33-1/3 percent or 25 percent if the documents so provide) established in Section 55-79.76(a) of the Condominium Act is excessive, thereby thwarting efforts to conduct Association meetings.

4. *Issue*: Whether additional revisions to the proxy requirements of Section 55-79.77D of the Condominium Act are needed after the 1991 amendments.

Recommendation: No legislative action needed at this time.

C. Budget Adoption

1. *Issue*: Whether Association members should have authority to vote on budget adoption.

Recommendation: Individual unit owners should have notice of Board action and have the opportunity to participate in development of the budget.

2. *Issue*: Whether expenditures by the Board of Directors should be restricted.

   Recommendation: No legislative action needed at this time.

D. Special Assessments

1. *Issue*: Whether Association members should have the right to approve the imposition of special assessments by the Board of Directors.

2. *Issue*: Whether limitations should be imposed to restrict the amount and purpose of special assessments.

3. *Issue*: Whether specific guidelines should be developed for the development, maintenance, and expenditure of reserve funds.

4. *Issue*: Whether "capital expenditures" should be defined.

5. *Issue*: Whether the law should require a competitive bidding process for capital expenditures.

   Recommendation: No legislative action needed at this time.

6. *Issue*: Whether the provisions of Section 55-79.83(b) of the Condominium Act should be amended to "validate" certain charges imposed against unit owners for reservation of common element facilities.

   Recommendation: Amend Section 55-79.83(b) of the Condominium Act to permit the Board of Directors to impose reasonable user fees.

E. Assessment Collection

1. *Issue*: Whether the association's lien for non-payment of assessments (Section 55-79.84A of the Condominium Act) should have limited "super-priority" over the first deed of trust as currently provided in the Uniform Condominium Act and the District of Columbia Condominium Act.

   Recommendation: The VHDA should research the issue with mortgage insurance agencies and consult bond counsel to determine the definition of "assessment" under current bonding regulations. The Subcommittee should seek comment from mortgage lenders.

2. *Issue*: Whether the Condominium Act, Section 55-79.84E, should be amended to mandate collection of attorneys' fees and costs of collection.

   Recommendation: No legislative action needed at this time.

3. *Issue*: Whether the six-month limitation on enforcement of condominium assessment liens found in Section 55-79.84D of the Condominium Act should be eliminated.

   Recommendation: Amend the Condominium Act, Section 55-79.84D, to lengthen from six to 24 months, the period for enforcement of condominium assessment liens, consistent with correlative provisions of the Property Owners' Association Act.

F. Board of Directors Authority

1. *Issue*: Whether Board authority and powers should be limited by statute to avoid action which exceeds authority granted in the governing documents.

   Recommendation: No legislative action needed at this time.

2. *Issue*: Whether Board authority and powers should be restricted to prohibit actions which in effect create discriminatory rules (e.g., the requirement that renters obtain liability insurance or be subject to eviction).

   Recommendation: Seek additional public comment.

G. Dispute Resolution

1. *Issue*: Whether governmental involvement in the relationship between condominium unit owners and the association Board of Directors is needed and appropriate.

   Recommendation: Extensive discussion on possible alternative dispute resolution forums and ombudsman-type services indicates the necessity for seeking additional public comment and study of related issues including cost analysis, feasibility, and desirability. The Commission Chairman will appoint a subcommittee of the Commission Condominium Act Subcommittee to research arbitration options and other dispute resolution mechanisms, including services offered by the George Mason University Institute for Conflict Analysis, and report back to the Commission on its findings.

2. *Issue*: Whether additional governmental authority and regulation of disputes between unit owners associations and declarants is appropriate.

   Recommendation: No legislative action needed at this time.

The Virginia Housing Study Commission will continue its study of the Virginia Condominium Act in 1992.

CONCLUSION

The year 1991 marks the transit of the Commission into its third decade of leadership and, about the Commonwealth, dramatic accomplishments in housing. Despite an ongoing recessionary fiscal climate and unprecedented state budgetary shortfalls, new organizations have been established, new commitments made, new partnerships forged, new success achieved. In sum, housing programs across Virginia—from Cape Charles to the Cumberland Gap—are flourishing.

The coming year and the coming decade will, however, present challenges in some ways more complex than those faced in housing during the past twenty years. The Virginia Housing Study Commission urges housing advocates to renew their commitment, generate visionary solutions, celebrate their accomplishments, champion their vision, and, together with the Commission, hold fast to the dream and the goal of ensuring safe, decent, affordable housing for every Virginian.

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Virginia Condominium Act

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