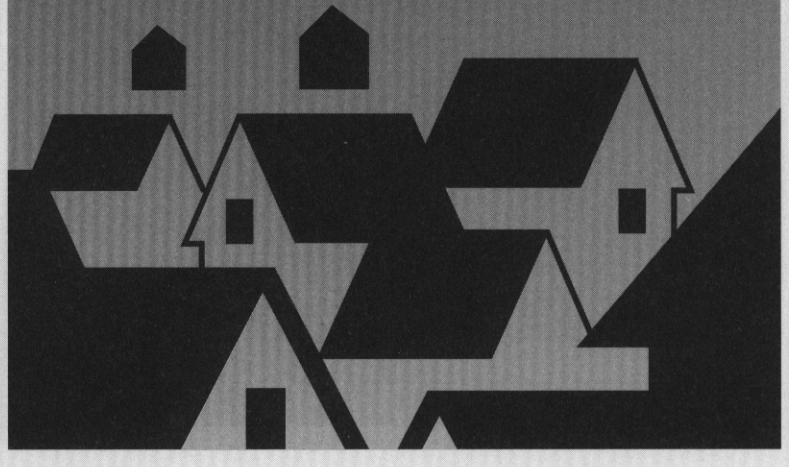
# VIRGINIA HOUSING STUDY COMMISSION

*1993 Annual Report to the Governor and The General Assembly of Virginia*



# VIRGINIA HOUSING STUDY COMMISSION

*1993 Annual Report to the Governor and The General Assembly of Virginia*

# VIRGINIA HOUSING STUDY COMMISSION

## GENERAL ASSEMBLY OF VIRGINIA

The Honorable Alan A. Diamonstein
Chairman
Virginia House of Delegates
94th Legislative District
Newport News

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

The Honorable Robert L. Calhoun
Virginia State Senate
30th Legislative District
Alexandria

The Honorable Clinton Miller
Virginia House of Delegates
26th Legislative District
Woodstock

The Honorable Lewis W. Parker, Jr.
Virginia House of Delegates
61st Legislative District
South Hill

The Honorable Jackie T. Stump
Virginia House of Delegates
3rd Legislative District
Oakwood

The Honorable Charles L. Waddell
Virginia State Senate
33rd Legislative District
Leesburg

The Honorable Stanley C. Walker
Virginia State Senate
6th Legislative District
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Mrs. Jean Patterson Boone
Richmond

Barbara J. Fried, Esquire
Springfield

Mr. Richard J. November
Richmond

## EXECUTIVE DIRECTOR

Nancy M. Ambler, Esquire
Richmond

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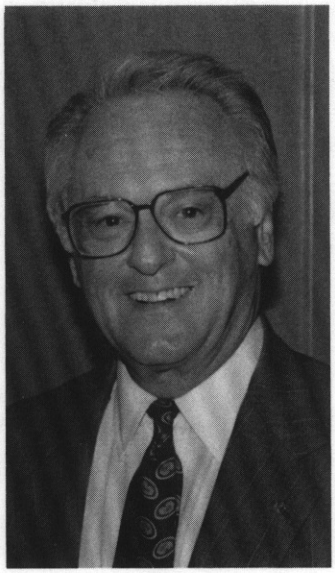
# INTRODUCTION

## BACKGROUND



*Commission Chairman Alan A. Diamonstein.*

Established by the 1970 Virginia General Assembly, the Virginia Housing Study 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.

The Commission is comprised of eleven members, including five members of the Virginia House of Delegates, three members of the Virginia State Senate, and three gubernatorial appointees. Delegate Alan A. Diamonstein of 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.

The 1992 General Assembly approved the following Commission recommendations: comprehensive consumer protection language in the Virginia Mobile Home Lot Rental Act; a one-time right of redemption of tenancy prior to an action for eviction or unlawful detainer; expansion of the Virginia tax credits program, fostering rent discounts to low-income elderly or disabled tenants, to include single family units; and restoration of the Virginia Housing Partnership Fund to the Virginia General Fund Budget.

And in 1993, the General Assembly approved comprehensive Commission recommendations related to the operation and management of condominium, cooperative, and property owners' associations. The Assembly also approved the Commission's landmark legislation designed to assert the responsibility of localities to consider the affordable housing needs of a more broadly defined community, as well as its recommendations to extend the innovative state tax check-off for housing and rent reduction tax credit programs.

## 1993 WORK PROGRAM

The Commission in 1993 focused on the following broad areas of study: homelessness in Virginia; blighted and deteriorated housing; and miscellaneous housing issues, including fire retardant treated (FRT) plywood roof sheathing, affordable housing density bonuses, bonding authority issues, and manufactured housing issues. 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. Then, joined by its Subcommittees and the Boards and key staff of DHCD and VHDA, the Commission convened its annual legislative work session. After reviewing testimony from public hearings, issue papers, and Subcommittee recommendations, the Commission unanimously agreed on the recommendations published in this report.

Also in 1993, together with DHCD and VHDA, the Virginia Housing Study Commission sponsored the Sixth Annual Governor's Conference on Housing. With some 800 attendees, the Conference is the largest statewide housing-related gathering regularly held in the nation. Together with the Virginia Interagency Action Council for the Homeless (VIACH) and the Virginia Coalition for the Homeless, the Commission sponsored "New Approaches to Old Problems," a conference on homelessness in the Commonwealth. In addition to legislative and conference activities, the Commission participated in implementing Virginia's Comprehensive Housing Affordability Strategy (CHAS), and its Executive Director met regularly with the boards and key staff of DHCD and VHDA, as well as leading housing advocates around the Commonwealth.

*The Commission and its Executive Director express sincere gratitude and appreciation to all who have contributed to its work, particularly Subcommittee members; Mr. Paul J. Grasewicz, Associate Director, DHCD; participants in 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 1994 General Assembly of Virginia.***

## HOUSE JOINT RESOLUTION 163 (1992): HOMELESSNESS IN VIRGINIA

In its 1992 Annual Report to the Governor and General Assembly, the Virginia Housing Study Commission issued interim findings pursuant to House Joint Resolution 163 (1992): Homelessness in Virginia. The Commission reported on a definition of homelessness, magnitude of the problem, its impact on citizens of the Commonwealth, and causes of homelessness. The following recommendations reflect the 1993 focus of the Commission on issues of data, policy, and programs as they relate to reducing and, ultimately, eliminating most cases of homelessness in the Commonwealth.

### One-Day Count

The need for a one-day count of shelters funded through SHARE (State Homeless Housing Assistance Resources) and non-SHARE-funded shelters has been largely precluded by a newly implemented cooperative venture between the Virginia Department of Housing and Community Development and the Virginia Coalition for the Homeless. The two have combined DHCD's quarterly reports for SHARE-funded shelters and VCH's reports on shelters funded through other mechanisms into one instrument generating one set of data. The FY 92 combined report reveals the following for that year:

- 60,456 persons were homeless in Virginia
- 57,960 were sheltered in emergency or transitional facilities in 3,607 beds
- 5,496 persons (the most conservative approximation) were homeless and not sheltered.

### Doubled-Up Housing

Doubled-up housing may be defined as a shared housing arrangement in which one or more person(s) in an overcrowded housing unit is paying less than a fair share (as defined by the homeowner or leaseholder) of the total housing costs. The critical component of this situation is the tenuousness of the guest's stay, for sudden displacement may result in homelessness.

In 1994, the Commission may wish to continue to address the issue of doubled-up housing as it relates to homelessness. Topics for such consideration may include:

- Determining possible acceptable density levels for doubled-up housing
- Working with local public housing assistance officials to determine the desirability and feasibility of permitting some doubled-up housing in public housing units
- Reviewing eligibility criteria for homeless assistance and services to determine the desirability and feasibility of including the "near homeless" — persons in doubled-up situations — among those eligible for such support
- Drafting a model zoning ordinance that includes a definition of "family" that would, effectively, permit residency of an extended family.

### Housing for Persons with HIV/AIDS

The National Commission on AIDS reported in 1992 that "the lack of affordable and appropriate housing is an acute crisis for people living with . . . HIV/AIDS." Various estimates of the numbers of homeless persons in the United States indicate that between one and three million people are homeless, and that some 15 percent of that population are infected with HIV.

The Commission in 1994 may wish to consider addressing in greater depth the housing-related recommendations of the National Commission on AIDS, as well as those of the Richmond AIDS Ministry, which recommendations include:

- Allow end stage supportive housing programs to make use of home health care just as such care would be used in the home of a person with HIV/AIDS. Current state regulations do not permit home health care in end stage supportive housing programs.
- Ensure that residents of homeless shelters who are immunocompromised (e.g., due to HIV infection) are allowed round-the-clock shelter. Without the basics of food, rest, and shelter, the opportunistic infections that are a constant threat to persons with HIV/AIDS are given their opportunity.
- Ensure that services are adequately funded for any and all AIDS-related housing programs.
- Conduct a prospective needs assessment for all HIV-related housing needs. A proactive stance is needed in AIDS housing more than any other type of housing due to the epidemic rate of increase of persons with HIV/AIDS in need of supportive housing.

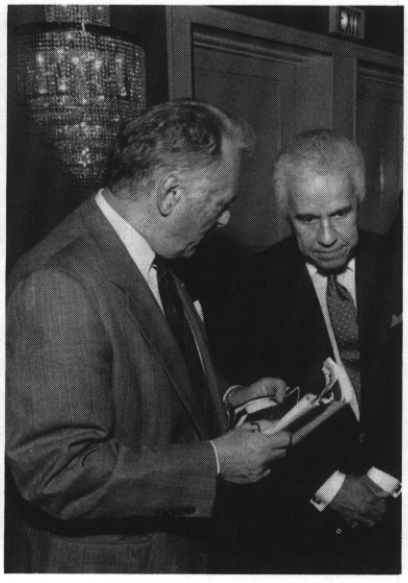
## Virginia Interagency Action Council for the Homeless (VIACH)

Perhaps one of the most critical challenges to reducing and, ultimately, eliminating homelessness in Virginia is to ensure excellent coordination among administrators, advocates, policy makers, and service providers. Currently, the Virginia Interagency Action Council for the Homeless (VIACH) provides such ongoing coordination. Spearheaded by DHCD, VIACH is a dynamic entity with a stated and adopted mission statement, membership criteria, and an action plan with specific goals and objectives.

The Commission recommends that VIACH receive staff support from one person on at least a part-time basis, and that such staff be located at DHCD. The Commission also reminds the head of each agency participating in VIACH of the critical importance of VIACH and of VIACH's meeting attendance policy.

## Statewide Homeless Intervention Program

Virginia's Homeless Intervention Program (HIP) was originally recommended in 1988 by the Commission and established in 1989 as a demonstration program capitalized with $1.026 million in state funds. Designed to provide temporary assistance to households experiencing a crisis that would result in homelessness, the program is a model for preventing homelessness and has received national recognition for its innovative approach and cost effectiveness.



*Alan Diamonstein with Governor L. Douglas Wilder prior to the Governor's keynote address at the Commission-sponsored 1993 Governor's Conference on Housing. Housing advocates honored the Governor for his demonstrated commitment to safe, affordable housing throughout the Commonwealth.*

***The Commission recommends that the cost-effective Virginia Homeless Intervention Program be expanded to serve clients across the Commonwealth.***

The HIP $1.551 million FY 94 allocation is disbursed by DHCD to ten organizations operating in 42 of 136 state jurisdictions to assist eligible households in their service areas. The Commission recommends that the Virginia Homeless Intervention Program be expanded to include the 94 localities currently unserved by the program, but with demonstrated program needs.

## Self-Help Evictions, Appeal Bonds, and Tenants Terrorized by Other Tenants

The Commission and the General Assembly of Virginia have recognized that preventing homelessness is far more cost-effective and far less traumatic for the individuals involved than is the provision of assistance following actual homelessness. Surveys of shelter residents by DHCD and the Virginia Coalition for the Homeless reveal that, in a majority of cases, eviction was the immediate cause of the client's homelessness. It is important to note that a landlord generally is not causing or precipitating, per se, an individual's homelessness by virtue of evicting that person. Rather, homelessness is, in most cases, the end result of a series of events that may include loss of employment, loss of benefits, an illness or accident that precludes employment or depletes financial resources, and exhaustion of social support networks. Hence, preventing evictions, where reasonable and possible, is generally recognized as a key objective in preventing and/or reducing homelessness.

*Self-Help Evictions*

The Commission recommends banning self-help evictions in the case of all residential leases. Such evictions may be generally defined as any peaceable action, other than notice or the judicial process, taken by a landlord to evict a tenant wrongfully on the landlord's premises. More specifically, the Commission recommends prohibiting landlords from willfully diminishing or interrupting such essential services as utilities or refusing a tenant access to the rental unit except pursuant to a writ of possession. The Commission is of the opinion that the rights and responsibilities of all residential landlords and tenants are, in cases of eviction, best determined and vindicated peacefully and equitably in judicial proceedings. Although self-help evictions are prohibited under the Virginia Residential Landlord and Tenant Act, as many as 35 percent of the state's rental units are not covered by the Act.

*Appeal Bonds*

To remove an eviction action from general district to circuit court, or to appeal an order for eviction or unlawful detainer, tenants are required by law to file an appeal bond of up to twelve months' future rent and three months' future damages. Low- and moderate-income tenants are often not able to meet the current appeal bond payment requirements, and so their right to appeal an eviction and trial by jury is effectively denied. The Commission has considered an alternative eviction appeal procedure similar to those of North Carolina and South Carolina, by which tenants could appeal by also filing a formal, legal agreement to pay their rent to the landlord as it becomes due, together with any unpaid prorated rent for the time period between judgment and the next rent due date. In cases where the circuit court opined that the tenant had failed to abide by the terms of the agreement, the court would be mandated to dismiss the appeal and grant immediate judgment for possession of the premises to the landlord. In cases where a general district court judge determined that the tenant had committed a criminal or willful act which was not remediable, the judge would be mandated to increase the bond for appeal to an amount commensurate with the misconduct.

The Commission will continue to study this important issue and, if consensus can be reached prior to the 1994 General Assembly Session, recommend legislation accordingly. The Commission recommends that the Virginia Supreme Court maintain statistics on the numbers and disposition of actions for eviction and unlawful detainer in the Commonwealth, which statistics now are not maintained on a statewide basis.

***Tenants have reported to the Commission that they were rendered homeless by the terror they experienced because of the gunplay and drug dealing of their fellow tenants.***

*Terrorized Tenants*

Numbers of tenants have reported in detail that they were rendered homeless by the terror they felt for their health, safety, and welfare — and that of their children — because of the activity and actions of their fellow tenants. The terrorized tenants were, in effect, constructively evicted because of such activity. Maryland has enacted a "drug nuisance" statute which, if similarly enacted in Virginia, could serve to prevent such constructive evictions and, subsequently, tenants fleeing to shelters and the plight of homelessness.

Under the proposed Virginia statute, any Commonwealth Attorney, county attorney, city attorney, or community association (i.e., a nonprofit community-based tenants' organization) would be permitted to file a civil action based on the law of nuisance to abate drug-related criminal activity or violent criminal activity. An action under this statute would be required to be heard within fourteen days after service of process to the parties, and the court, after notice and a hearing, could grant an order of possession to the landlord and would be required immediately to issue its writ of possession to the sheriff commanding execution of the writ within five days after its issuance. The Commission will continue to study the concept of a "terrorized tenants" statute prior to the 1994 General Assembly Session and, if consensus can be reached, recommend that such legislative initiative be introduced in that Session.

## Rooms and Regulations

To the extent that zoning, building, and other local regulations prevent or narrowly restrict housing options for low-income persons, they ultimately play a role in forcing tens of thousands of Virginians into a state of homelessness. Following are Commission recommendations designed to encourage localities to permit affordable housing options — including emergency shelters, transitional housing, accessory apartments, shared housing arrangements, boarding houses, and single room occupancy (SRO) units — consistent with communities' needs, health, safety, and welfare.

*Land Use*

Local zoning ordinances adopted under the provisions of the state's current enabling legislation are potentially the most significant regulatory barrier to affordable housing alternatives. In order to regulate the use of land responsibly, localities clearly need the flexibility permitted under current statutes. However, the lack of uniformity among local zoning ordinances inhibits these alternatives in some communities while encouraging their concentration in others. Further, ordinances in different communities subject housing alternatives to differing regulatory procedures, sometimes permitting them by right and in other cases employing discretionary zoning.

The Commission recommends amending § 15.1 of the *Code* to provide that the conversion of single family residences to include an accessory dwelling unit shall not be prohibited by local zoning ordinances. The legislation would continue to authorize localities to impose reasonable conditions to ensure compatibility with other permitted uses within the district.

The Commission also directs VIACH to draft uniform definitions of "emergency shelter" or "homeless shelter" and "single room occupancy facility," and to report back to the Commission in 1994 with such draft language which the Commission will consider for possible inclusion in *Code* § 15.1-430. The Commission further directs that, as part of its work plan, VIACH and other interested parties cooperate in developing site development and management standards for emergency shelters for the homeless. Shelters are currently subject to wide variations in local regulatory regimes, and a more uniform set of standards based upon an objective assessment of shelters, their sites, and essential management elements could serve as a model for local land use regulations.

*Building Regulations*

The built-in appeals process and the scheduled periodic revision of the Uniform Statewide Building Code provide an appropriate and effective means for adjusting building

code content to fit changing needs and circumstances. However, it is important that the unique circumstances of affordable housing options are considered in the development of building regulations designed to provide adequate, cost-effective protection for residents. Therefore, the Commission recommends that, at future Virginia conferences on homelessness, one or more sessions focus on the impact of building regulations on affordable housing alternatives and provide advocates with additional information on the code revision process. The Commission also requests that the Board of Housing and Community Development actively solicit suggestions from shelter, transitional housing, and SRO sponsors for USBC revision.

*Taxation*

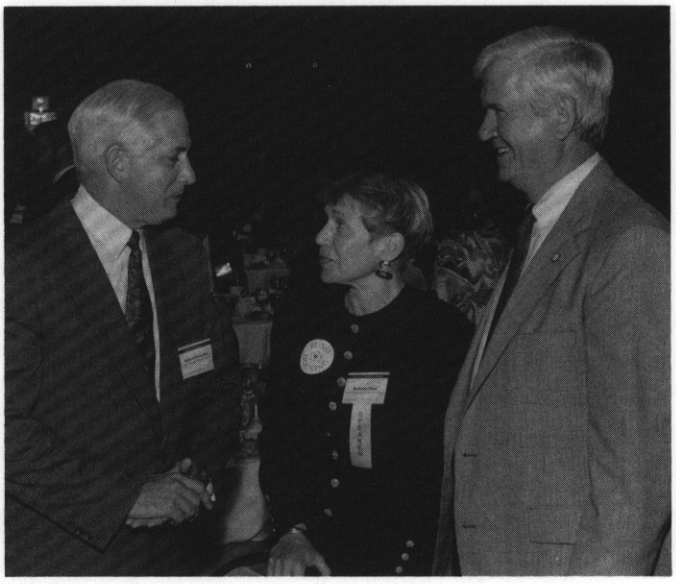
Persons living for continuous periods of thirty days or more in SROs should be unaffected by the transient occupancy tax. However, under current Virginia law, persons with more casual housing arrangements, particularly those occupying units with daily rentals, may be vulnerable to the tax if they stay in the same facility for less than thirty days. Therefore, the Commission recommends amending §§ 58.1-3819-20 of the *Code* to exempt SROs from the transient occupancy tax and apply the same standard to municipalities by specific reference in these sections.

## HOUSE JOINT RESOLUTION 442: FIRE RETARDANT TREATED PLYWOOD

Under House Joint Resolution 442, the Commission was requested by the 1993 Virginia General Assembly to study the problems associated with the premature failure of existing installations of fire retardant treated (FRT) plywood roof sheathing and to recommend actions to help resolve claims pending as a result of such failures.

FRT plywood has been treated, usually through a pressure process, with chemicals known to reduce flammability. The product's use, which increased along with the pace of home building in the late 1970s and early 1980s, has been permitted under building code regulations since 1979 as an alternative to fire-rated parapet walls extending above the roof plane of attached dwelling units. By the mid-1980s, builders and individual home owners began reporting such serious FRT sheathing problems as sagging, buckling, and bowing of roofs. Some products were strongly associated with high levels of degradation of treated plywood; few or no problems were reported with others.

The National Association of Homebuilders (NAHB) estimated in 1989 that affected roofs numbered no more than 250,000 nationwide with an estimated replacement cost of approximately $500 million. Local estimates of the extent of the problem vary, but in northern Virginia conservative estimates indicate potential FRT-related problems may



*Commission members Richard J. November (left), Barbara J. Fried, and Charles L. Waddell.*

affect some 30,000 roofs. Beginning in 1990, the NAHB and major builders negotiated with FRT manufacturers and other interested parties for the creation of a compensation fund as the best means for assuring that individuals whose FRT-sheathed roofs failed would be reimbursed for damages or replacement costs. Negotiations stalled in 1992 and have not been resumed, and most of the parties involved in the effort have concluded that a nationwide agreement is not likely in the immediate future.

The Commission considered the following limited options for addressing FRT problems in Virginia. Statutory provisions, including the statute of limitations and the statute of repose, effectively bar homeowner recovery in most FRT cases. The damages threshold for entering a federal class action would prevent most individual homeowners from participating, effectively barring only such parties as condominium associations or major contractors as potential litigants via this route.

Alternatives for establishing a compensation fund were also explored. However, a statewide fund would require participation by those who played a minor (or no) contributing role in the FRT problem. A regional fund, capitalized by building permit surcharges, for instance, would almost certainly tend to apportion costs inequitably among responsible parties. Banning the use of FRT sheathing in Virginia would raise federal constitutional issues on due process, equal protection, or commerce clause grounds.

The Commission requests that the Board of Housing and Community Development consider amending the Uniform Statewide Building Code to prohibit local building officials from accepting FRT plywood for use as roof sheathing unless the manufacturer provided nationally recognized test results or equivalent indicators of future product performance that address longevity of service under typical conditions of installation. The Commission also recommends the implementation of a cooperative product awareness campaign — sponsored by the Home Builders Association of Virginia, DHCD, and the Virginia Department of Agriculture and Consumer Services — focusing on FRT products and their potential problems.

## HOUSE JOINT RESOLUTION 489: BLIGHTED AND DETERIORATED PROPERTY

In Virginia, one of the major obstacles to revitalization efforts is the presence of blighted and deteriorated buildings within communities in many areas of the state. Although the causes of structural abandonment and neighborhood decay are complex, their devastating social consequences — crime, violence, and fires, to cite but a few — are relatively simple to ascertain. Abandoned or severely deteriorated structures require increased public expenditures to protect health, safety, and welfare. Moreover, because such units often have low assessed values or are tax delinquent, localities receive little or no revenue from such property to help underwrite the increased dollars they require.

According to the 1990 U. S. Census, approximately seven percent of all housing units in urban areas of Virginia were vacant, and approximately two percent of these vacant units were described as "boarded up." Even on the fringe of Virginia's urban areas, vacant housing units represent over five percent of the total housing.

The Commission was requested under House Joint Resolution 489 passed by the 1993 Virginia General Assembly to study and recommend remedies to address blighted and deteriorated structures in the Commonwealth. (Other 1993 executive and legislative branch studies focused on related issues such as community development and violence in blighted areas.) The Commission identified three major goals for addressing blighted and deteriorated structures:

- prevent buildings and houses from becoming vacant or abandoned for extended periods of time
- rehabilitate buildings that have been vacated or abandoned but have not become seriously deteriorated and that are structurally sound
- eliminate or clear seriously deteriorated and blighted structures from neighborhoods.

Following are the Commission's initial recommendations for achieving these goals.

## Spot Blight

Many Virginia neighborhoods are at risk of deteriorating because of one or more individual instances of blighted properties. While § 36-49.1 of the *Code* provides localities broad powers to acquire and clear blighted and deteriorating structures within targeted "conservation plan" areas, there is no similar authority for addressing "spot" problems of blighted property outside such designated redevelopment areas. The Commission recommends amending the *Code* to permit housing and redevelopment authorities to utilize their power after receiving governing body approval to acquire and rehabilitate or clear individual blighted and deteriorated properties without the requirement of such properties being located in designated area-wide blighted zones ("conservation plan" areas). With a goal of preventing such property from becoming a threat to surrounding properties, the governing body could either approve the authority's plan or take action itself.

## Building Inspections Following Change of Tenancy

The *Code* and the Uniform Statewide Building Code empower a local governing body to inspect and enforce building regulations for existing buildings. Currently, a certificate of occupancy is issued only upon completion of a new building or a change of use of a building. The Board of Housing and Community Development recently amended the USBC to increase local authority by allowing building officials to suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC.

The Commission recommends further strengthening local building code enforcement efforts by authorizing localities to require the issuance of certificates of compliance with current building regulations after inspections of buildings when rental tenancy changes or rental property is sold. Such authorization would be limited to buildings located in conservation and rehabilitation districts designated by the local governing body, or those in which a civic group has petitioned the governing body to conduct such inspections.

## Overgrown Lots and Peeling Paint

While abandoned and deteriorating buildings are the most common indication of neighborhood blight, overgrown lots also are visual evidence of disinvestment. High grass and overgrown shrubbery are more than aesthetic issues; they also spell trouble for public health and safety. The Commission recommends amending § 15.1-11 of the *Code* to extend current authorization for localities to control the growth of grass and weeds on vacant property as well as property on which buildings are located.

## Streamlining the Tax Sale Process

While the lengthy and cumbersome tax sale process is designed to provide maximum protection to property owners, it may not serve the interests of neighboring properties as well as it does those of tax-delinquent owners. More specifically, a locality cannot initiate the sale of property to satisfy tax liens until the taxes have been delinquent at least three years following December 31 of the year the taxes were originally due. During this waiting period, the property, if abandoned or neglected, will further decay and be susceptible to arson and vandalism. In turn, it will become more difficult and costly to rehabilitate as each year passes, and will have a negative effect on surrounding properties.

In addition to the three-year tax delinquency period, another obstacle to the acquisition and revitalization of abandoned property by localities is the inability to obtain *clear title* to such properties. Lending institutions, which avoid offering loans for purchasing or rehabilitating property unless clear title is held by the applicant, generally require two years to lapse following a tax sale before making such loans. The Commission recommends legislation that would require lienors and persons with title claims to enter their claims within ninety days after a locality announces and publishes its intention to acquire property. Such action would assure clear title at the point of sale, and expedite the rehabilitation of the properties

***One of the major obstacles to revitalization efforts in the Commonwealth is the significant presence of blighted and deteriorated buildings in many communities.***

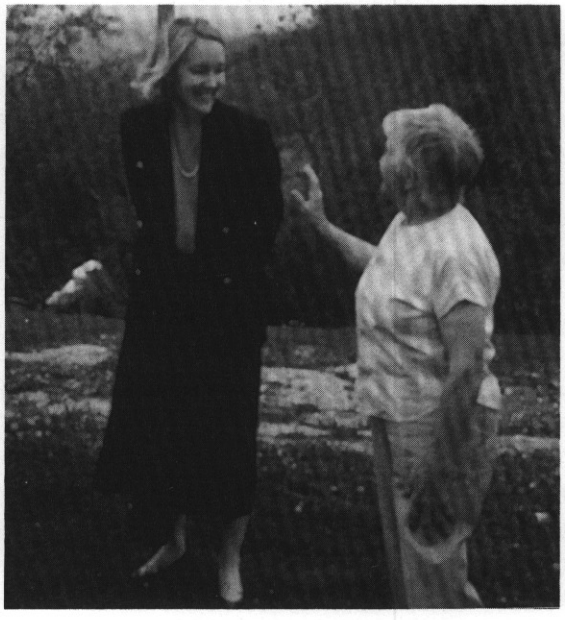
to be sold. The Commission will also examine in further detail in 1994 the desirability and feasibility of substituting *written notice* for actual service of process to mortgage holders, trustees, and judgment creditors of the subject property.

The Commission further recommends amending the *Code* to provide an exception to the current tax delinquent sales process for those cases involving blighted and abandoned housing in which the locality has incurred expenses in title searches, advertising, and other efforts involved in selling the property, but has not received a bid equaling the assessed value. The locality could then sell the property to the *highest bidder* (in many cases the locality itself) and in effect purchase the property for its own redevelopment purposes. Section 58.1-3344 of the *Code* provides that unpaid property tax shall be a lien on the property and the party listed as owner shall be liable for the payment of taxes. Tax liens on seriously dilapidated property can approach or exceed the assessed or fair market value of the property, which in turn effectively prevents a locality from selling or acquiring tax delinquent property.

## Financial and Technical Assistance for Revitalization Efforts

Rehabilitation of blighted and deteriorated neighborhoods and prevention of an area's slide into decay are indeed expensive propositions, but critical ones for a number of the Commonwealth's older cities. Costs for the tax sale process alone can exceed $6,000 per property; demolition can add thousands more. Even modest rehabilitation of a property that has deteriorated can easily exceed a cost of $50,000. Many localities, already struggling with decreased tax revenues and increased municipal expenses, have neither the fiscal resources nor the staff capabilities to implement a comprehensive revitalization program for blighted areas.

The Commission recommends that VHDA make available through its Virginia Housing Fund loan monies at below-market interest rates to provide localities, on a competitive basis, financial assistance to revitalize blighted neighborhoods. The Commission also notes that the Virginia Housing Partnership Fund includes several component programs in which localities could participate to assist in revitalizing older neighborhoods, and recommends that, if at all possible, allocations for the Fund be maintained at current levels or increased for the 1995-96 biennium. The Commission further recommends that VHDA and DHCD develop a statewide clearinghouse for collecting and disseminating information and technical assistance to local governments, nonprofits, and neighborhood groups on the establishment and operation of an abandoned housing program.



*Mary Alice Richardson explained to Commission Executive Director Nancy M. Ambler during a Slabtown site visit that her "house would have been on the ground" had it not been for the Commission-initiated Virginia Indoor Plumbing/Rehabilitation Program that also provided Mrs. Richardson her first indoor plumbing facilities.*

### Other Strategies

In its 1993 study of blighted and deteriorated housing, the Commission focused primarily on neighborhood revitalization strategies related to locally authorized options and building codes. The Commission will continue its study of this critical subject in 1994, and will address, among other issues, neighborhood revitalization strategies such as tax sale non-cash bids, private sector involvement, and urban homesteading.

## AFFORDABLE HOUSING DENSITY BONUS ORDINANCES

In 1989, at the recommendation of the Commission, the General Assembly authorized a number of Virginia's localities to develop affordable dwelling unit (ADU) ordinances. Accordingly, §§ 15.1-491.8-9 of the *Code* allow designated localities — currently 18 are so empowered — to amend their zoning ordinances to require developers of higher density residential projects to construct housing for low- and moderate-income households in exchange for an increase in the number of units permitted in the development. Because of the encouraging trends resulting from ADU ordinances and at the request of Virginia localities, the Commission recommends allowing all counties, cities, and towns in Virginia to develop ADUs, and to grant developers an additional density bonus of up to ten percent on affordable dwelling unit projects if the developer agrees voluntarily to offer appropriate contributions directed at construction or support of local mass transit needs.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY LEGISLATION

### Bonds Secured by Capital Reserve Funds

Since 1973, the Virginia Housing Development Authority has issued bonds secured by capital reserve funds created under certain of its bond resolutions in accordance with the provisions of § 36-55.41 of the *Code*. The capital reserve funds provide additional security to the bondholders by establishing a source of funds for the payment of the bonds in the unlikely event that the payments from the mortgage loans financed by the bonds are insufficient to pay principal and interest on the bonds. If the amount in the capital reserve funds is less than the minimum capital reserve fund requirement (i.e., the greatest amount of principal and interest coming due on the bonds in any future fiscal year), the Governor is to include in the gubernatorial budget, as an agency request, the amount of such deficiency, and the General Assembly is authorized, but not legally required, to appropriate monies to fund such deficiency. Bonds issued by VHDA do not constitute debt of the Commonwealth, and the Commonwealth is not liable for such bonds. The capital reserve funds and the statutory provisions for the funding of any deficiency therein have enabled the Authority to sell the bonds at an interest rate which is feasible to finance multifamily developments.

The *Code* was amended in 1987 to provide a $300.0 million cap on the amount of future capital reserve fund bonds issued by VHDA. The Authority anticipates that, without authorization for the issuance of an additional $300.0 million of capital reserve fund bonds, significantly fewer multifamily developments would be financed under its program subsequent to utilization of the remainder of the current $300.0 million cap. The Commission recommends legislation to permit the VHDA to issue, subsequent to July 1, 1994, notes and bonds in an aggregate principal amount of $300.0 million secured by its capital reserve funds.

### Swap Agreements

The VHDA currently issues long-term fixed rate bonds for the purpose of financing long-term fixed rate mortgage loans. Matching the interest rate and maturity of the bonds with the interest rate and maturity of the mortgage loans avoids the risk that the Authority's cost of borrowing will, at any time during the life of the bonds, exceed the interest rate on its mortgage loans. However, alternative bond financing methods could provide adjustable

rate mortgage (ARM) loans based upon short-term rates, which are generally lower than long-term rates.

One such alternative bond financing method utilizes "swap agreements," whereby VHDA can convert its fixed rate debt obligation, utilizing third-party agreements, into an adjustable rate debt obligation and thereby match its debt obligation with its adjustable rate mortgage loans. The Commission recommends legislation to permit VHDA to enter into swap agreements and similar arrangements which would permit the financing of adjustable rate mortgage loans or would lower the Authority's costs of borrowing. Such legislation would be substantially the same as § 15.1-227.27 of the *Code*, which authorizes counties, cities, and towns to enter into swap agreements.

## VIRGINIA MANUFACTURED HOUSING BOARD LEGISLATION

The Department of Motor Vehicles will continue to license manufactured home dealers until May 1, 1994, at which time the Virginia Manufactured Housing Board shall be the responsible licensing authority. In developing regulations for administering the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Law, the Board has identified several limitations with the language contained in the Law. Following are Commission recommendations designed to ensure efficient and effective administration of the Manufactured Housing Law regulations, scheduled to become effective April 1, 1994.

- Require all manufactured home manufacturers, dealers, and brokers associated with home sales in Virginia, whether residents or nonresidents of the Commonwealth, to be regulated and licensed. Currently, § 36-85.16 of the *Code* requires regulation and licensure only for salespersons employed by or affiliated with a manufactured home dealer, and does not speak to the residency issue.
- Specify the power of the Board to collect both annual and per unit sold fees. Currently the *Code* is not specific on the type of fees that may be levied, and the Board has determined that a fair fee system would require both a low annual fee per dealer and a fee for each unit sold.
- Provide Manufactured Housing Recovery Fund protections equivalent to those provided under motor vehicle law to ensure greater protection to all potentially damaged by acts in violation of manufactured housing law. Currently, only buyers of manufactured homes may recover under the Fund, whereas others, such as dealers, may also suffer losses that should be subject to recovery.
- Eliminate the double fee requirements currently imposed on manufactured home dealers, and provide that such dealers pay fees only for the Manufactured Housing Transaction Recovery Fund. Currently, dealers are required to pay fees into both the Motor Vehicle and the Manufactured Housing Transaction Recovery Funds, although such duplicative payments were not the intent of the Manufactured Housing Fund legislation.

*Commission members Jean Patterson Boone and Clinton Miller.*

# HOUSE JOINT RESOLUTION 163 (1992): HOMELESSNESS IN VIRGINIA

## BACKGROUND

In its 1992 Annual Report to the Governor and General Assembly, the Virginia Housing Study Commission issued interim findings pursuant to House Joint Resolution 163 (1992): Homelessness in Virginia. To summarize, the Commission reported in 1992 on the following: definition of homelessness, magnitude of the problem, its impact on citizens of the Commonwealth, and causes of homelessness. In addition, the Commission identified program and policy alternatives for possible study in 1993 to determine their desirability and feasibility for possible implementation to reduce and/or eliminate homelessness in Virginia.

The following recommendations reflect the 1993 focus of the Commission on these issues of data, policy, and programs as they relate to reducing and, ultimately, eliminating most cases of homelessness in the Commonwealth:

- One-Day Count
- Doubled-Up Housing
- Housing for Persons with HIV/AIDS
- Excellent Coordination Among Administrators, Policy Makers, and Service Providers
- Statewide Homeless Intervention Program
- Self-Help Evictions
- Appeal Bonds
- Tenants Terrorized by Other Tenants
- Land Use and Zoning Law Affecting Prevention of Homelessness.

## ONE-DAY COUNT

The need for a one-day count of shelters funded through SHARE (State Homeless Housing Assistance Resources) and non-SHARE-funded shelters has been largely precluded by a newly implemented cooperative venture between the Virginia Department of Housing and Community Development and the Virginia Coalition for the Homeless. The two have combined DHCD's quarterly reports for SHARE-funded shelters and VCH's reports on shelters funded through other mechanisms into one data collection instrument.

Such instrument has, in turn, generated one set of data that provide both quarterly and annual statistics on those homeless persons in Virginia who have received shelter. For the first time, then, the Commonwealth has the advantage of a consistent and standardized data collection method for determining the number of sheltered homeless persons across the state.

In addition, a Virginia Interagency Action Council for the Homeless (VIACH) subcommittee developed data collection methods to determine, with reasonable accuracy, the number of unsheltered homeless persons in Virginia. Such information, to be included in the state Comprehensive Housing Affordability Strategy (CHAS), will include not only an estimated count of Virginians who are living in doubled-up housing situations, but also who may be homeless and unsheltered but receiving some form of assistance, such as through community soup kitchens.

The Department of Housing and Community Development fiscal year 1992 "Report on Homelessness in the Commonwealth of Virginia" was released in November 1993 and reveals the following for that year:

- 60,456 persons were homeless in Virginia
- 57,960 were sheltered in emergency or transitional facilities in 3,607 beds
- 5,496 persons (the most conservative approximation) were homeless and not sheltered.

The report also contains this information on characteristics of Virginia's homeless:

- In emergency facilities alone, almost half (47%) of the requests for shelter were denied due to lack of space.
- Of the persons sheltered, 49% were single adults, male and female. Nearly half (48%) of all persons sheltered were in family groups.
- Children under 18 represented 31% of the sheltered population.
- Approximately 4% of homeless persons were over the age of 60.
- Forty-seven percent of homeless persons were African-American, 44% were White, and 4.5% were Hispanic.
- Persons stayed in emergency shelters an average of 28 days, and in transitional facilities an average of 104 days.
- Most persons were residents of the Commonwealth prior to seeking shelter in Virginia; only 12% resided out-of-state prior to becoming homeless.
- Seven percent of persons sheltered were assessed with mental illness. However, national statistics report that one-third of all homeless persons are mentally ill, indicating that this population is not assessed properly by Virginia shelter providers or is much more likely to be unsheltered or turned away by shelter providers.
- Nineteen percent of persons sheltered were alcohol- or chemically-dependent, whereas national statistics indicate just over one-third of all homeless persons have these problems. Similar conclusions may be drawn regarding the discrepancy in state and national statistics as were drawn for persons with mental illness.
- Of the total persons sheltered, 90% received shelter in urban facilities, 8% were sheltered in small city facilities, and 2% were sheltered in rural shelters.
- Transportation services and employment counseling were the two services provided most often by shelter providers.
- More than one-third of persons leaving shelters obtained permanent housing, while almost two-thirds of persons leaving transitional housing found permanent housing.

The Department of Housing and Community Development report recommends that the Commonwealth focus on the following needs:

- provision of and education regarding the need for shelter for all homeless persons statewide
- development of transitional housing
- provision of services for homeless children
- identification of and provision of services to mentally ill and/or substance-dependent homeless persons
- pursuit of anti-poverty strategies
- development of additional affordable housing.

## DOUBLED-UP HOUSING

Doubled-up housing may be defined as a shared housing arrangement in which one or more person(s) in an overcrowded housing unit is paying less than a fair share (as defined by the homeowner or leaseholder) of the total housing costs. The critical component of this situation is the tenuousness of the guest's stay, for sudden displacement may result in homelessness.

Although earlier research regarding the social support systems of homeless persons indicated that their network of support was smaller than those of persons who have not experienced homelessness, more recent research suggests that the social support systems of persons who experience homelessness are not significantly smaller than those of other persons in poverty. However, it appears that homelessness occurs after an individual or family has exhausted a social support system by living with several members of that system.

Although social support systems may be strained, as the availability of low-cost housing has decreased, a 1992 survey of Virginia families receiving Aid to Families with

Dependent Children (AFDC) found that those in shared housing enjoyed lower housing costs and higher housing quality with only a small increase in crowding. Some advocates for the homeless interpret this finding to suggest that, for the short term at least, doubled-up housing may be an acceptable means of coping with the shortage of affordable housing.

In 1994, the Virginia Housing Study Commission may wish to continue to address the issue of doubled-up housing as it relates to homelessness. Topics for such possible consideration may include:

- Determining possible acceptable density levels for doubled-up housing
- Working with local public housing assistance officials to determine the desirability and feasibility of permitting some doubled-up housing in public housing units
- Reviewing eligibility criteria for homeless assistance and services to determine the desirability and feasibility of including the "near homeless" — persons in doubled-up situations — among those eligible for such support
- Drafting a model zoning ordinance that includes a definition of "family" that would, effectively, permit residency of an extended family. (The "Rooms and Regulations" subsection of this report addresses zoning and related regulatory issues pursuant to homelessness.)

## HOUSING FOR PERSONS WITH HIV/AIDS

The National Commission on AIDS reported in 1992 that "the lack of affordable and appropriate housing is an acute crisis for people living with . . . HIV/AIDS." Various estimates of the numbers of homeless persons in the United States indicate that between one and three million people are homeless, and that some 15 percent of that population are infected with HIV.

The number of homeless persons with HIV is reported to be growing rapidly, and it is estimated that from one-third to one-half of all persons with AIDS are either homeless or in imminent danger of becoming homeless. In central Virginia, Richmond's Medical College of Virginia is the major provider of medical care for persons with AIDS. In early 1990, MCV treated less than 500 HIV-infected patients. More recently, the hospital treats over 1,000 HIV-infected patients, with acute daily care costing from $700 to $1,000 per patient.

The National Commission on AIDS reports that housing problems for people with HIV arise in a variety of ways. Many individuals are evicted when their HIV status becomes known, and most of them are not aware that such discrimination violates federal and Virginia fair housing law. For others, loss of income as a result of illness and inability to work creates an inability to pay the rent or mortgage. Some had no homes before becoming HIV-infected and lived on the street. Too ill to continue to support and care for themselves, they shuttle back and forth between shelters and acute-care hospitals. Some children with HIV spend their entire lives in hospitals because of the lack of adequate housing for them and their parents, and HIV-infected women with children are often excluded from the few residential shelter programs that do exist. Clearly, inadequate, affordable appropriate housing resources for persons with HIV/AIDS may lead to homelessness on the part of those persons who are least able to endure such a fate.

Following are excerpts from the 1992 report of the National Commission on AIDS, "Housing and the HIV/AIDS Epidemic." That Commission recommends:

- That HUD make HIV-AIDS a top priority.
- That Congress mandate that HUD recognize HIV/AIDS as a disability.
- That people with HIV/AIDS be granted access to traditional housing programs.
- That HUD interpret its design standards to accommodate the needs of people living with HIV disease and the support networks of such individuals.
- That Congress make clear that HIV/AIDS-specific housing, under Shelter Plus Care and other federal programs, is both permitted and essential.

- That Congress continue to play a leadership role in developing new funds to address the HIV/AIDS housing crisis.
- That at the local level, a continuum of housing options be made available for people living with HIV, including hospice care, intermediate or supportive housing, and rental subsidies which could allow people to reside independently until such time as they need additional care. The National Commission advises that "creativity and cooperation must be encouraged. The alternative is that there is no alternative. Only the streets."

The Richmond AIDS Ministry recommends the following action pursuant to affordable housing and supportive services for persons with HIV/AIDS.

- Allow end stage supportive housing programs to make use of home health care just as such care would be used in the home of a person with HIV/AIDS. Current state regulations do not permit home health care in end stage supportive housing programs.
- Ensure that residents of homeless shelters who are immunocompromised (e.g., due to HIV infection) are allowed round-the-clock shelter. Without the basics of food, rest, and shelter, the opportunistic infections that are a constant threat to persons with HIV/AIDS are given their opportunity.
- Ensure that services are adequately funded for any and all AIDS-related housing programs.
- Conduct a prospective needs assessment for all HIV-related housing needs. A proactive stance is needed in AIDS housing more than any other type of housing due to the epidemic rate of increase of persons with HIV/AIDS in need of supportive housing.

The Virginia Housing Study Commission in 1994 may wish to consider addressing in greater depth the housing-related recommendations of the National Commission on AIDS, as well as those of the Richmond AIDS Ministry.

## EXCELLENT COORDINATION: VIACH

Perhaps one of the most critical challenges to reducing and, ultimately, eliminating homelessness in Virginia is to ensure excellent coordination among administrators, advocates, policy makers, and service providers. In testimony presented at public hearings, as well as in meetings and written material submitted, the issue and importance of coordination is regularly raised.

Currently, the Virginia Interagency Action Council for the Homeless (VIACH) serves the role of providing such ongoing coordination. Spearheaded by the Virginia Department of Housing and Community Development, VIACH is a dynamic entity with a stated and adopted mission statement, membership criteria, and an action plan with specific goals and objectives.

At a Spring 1993 strategic planning retreat and in subsequent meetings, representatives of VIACH member and advisory organizations have unanimously agreed that, to realize its goals and objectives and to ensure truly excellent coordination among the above-referenced agencies serving the homeless, it will be necessary to assign a DHCD staff member on at least a part-time basis to staff VIACH activities. The estimated fiscal impact of this proposal would be approximately $25,000 per annum. The Virginia Housing Study Commission recommends that VIACH, a critical and cost-effective mechanism already in place and operating, receive staff support as outlined, and that such staff be located at DHCD.

The Commission also notes that, for VIACH successfully to pursue its mission, meeting attendance by agency representatives should be regular and ongoing by one or, at a maximum, two persons to ensure continuity of agency participation and information exchange. The adopted VIACH meeting attendance policy is as follows: Members are requested to notify the VIACH staff person or Chair if they or their alternates are unable to attend a regularly scheduled meeting. If the member or appointed alternate of the

organization misses more than two meetings a year, without notification, another agency will be asked to serve or the agency head will be notified and asked to appoint another person to the Council. Accordingly, the Commission reminds the head of each agency participating in VIACH of the critical importance of VIACH and of VIACH's meeting attendance policy.

## A STATEWIDE HOMELESS INTERVENTION PROGRAM

Virginia's Homeless Intervention Program (HIP) was originally recommended in 1988 by the Virginia Housing Study Commission and established in 1989 as a demonstration program capitalized with $1.026 million in state funds. An extensive evaluation of the program following its first year in operation was conducted by the VCU Center for Public Service and confirmed the widely held perception of the program's effectiveness. The program, a model for preventing homelessness, has received national recognition for its innovative approach and cost effectiveness.

The Virginia HIP was originally designed to provide temporary assistance to households experiencing a crisis that would result in homelessness. Currently, funds are allocated to prevent homelessness and to help homeless people obtain permanent housing. The program provides rental assistance, security deposits, and mortgage assistance to households in imminent danger of eviction or foreclosure or who are homeless. It also provides housing counseling to help ensure that the persons who receive help become self-sufficient.

The HIP program is administered by the Department of Housing and Community Development through ten organizations operating in 42 of 136 state jurisdictions. The $1.551 million FY 94 allocation is disbursed to the ten organizations to serve eligible households in the counties and cities in their service areas.

As low wages, part-time employment, inadequate benefits, and a lack of affordable housing, among other factors, continue to force increasing numbers of Virginians into poverty and homelessness, more and more household in crisis turn to the HIP for assistance. Two HIP applicants are now turned away for each applicant assisted. Moreover, the ten participating HIP organizations and DHCD receive numerous requests annually from households who are in imminent danger of eviction or foreclosure but who live outside of one of the 42 jurisdictions served by the program. Most of these requests come from persons who have exhausted all other resources and who have no place to turn but to shelters or the streets.

The Commission continues to receive testimony verbally and in writing urging that the most effective solution to homelessness — both in dollar amounts and human terms — is to prevent the tragedy from occurring. The HIP is, arguably, the most cost-effective and efficient method for achieving just that, and for helping to ensure that those at imminent risk of homelessness do not face the tragedy again once it has been avoided. Accordingly, the Commission recommends that the Virginia Homeless Intervention Program be expanded to include the 94 localities currently unserved by the program. Such expansion would require an additional state allocation of $3,471,326 per year for a total cost of $5,022,326 annually. An allocation at this level could assist at least 3,800 households annually to obtain permanent housing or maintain their housing and ensure their self-sufficiency.

## SELF-HELP EVICTIONS, APPEAL BONDS, AND TENANTS TERRORIZED BY OTHER TENANTS

As previously discussed, the Virginia Housing Study Commission and the General Assembly of Virginia have recognized that preventing homelessness is far more cost-effective and far less traumatic for the individuals involved than is the provision of assistance following actual homelessness. Surveys of shelter residents by the Department of Housing and Community Development and the Virginia Coalition for the Homeless reveal that, in a majority of cases, eviction was the immediate cause of the client's homelessness.

Significant numbers of evictions occur daily throughout Virginia. The Sheriff's Office for the City of Richmond has indicated that during 1992, there were thousands of evictions in the city, of which 750 required Sheriff-assisted removal of tenants and/or personal

***The Commission recommends banning self-help evictions in the case of all residential leases.***

property. Similar eviction statistics were reported by other Virginia urban localities. Thousands of evicted tenants statewide likely lose most of their personal property upon eviction, and are faced not only with saving adequate dollars to rent another unit and pay deposits for rent and utilities, but also with furnishing the unit and re-establishing a home once they are able to do so.

It is important to note that a landlord generally is not causing or precipitating, per se, an individual's homelessness by virtue of evicting that person. Rather, homelessness is, in most cases, the end result of a series of events that may include loss of employment, loss of benefits, an illness or accident that precludes employment or depletes financial resources, and exhaustion of social support networks. Hence, preventing evictions, where reasonable and possible, is generally recognized as a key objective in preventing and/or reducing homelessness. Following are Commission findings on Virginia statutes pursuant to eviction.

### Self-Help Evictions

Property law in the United States has its beginnings in the common law of England, but the common law has been modified by the courts in the United States to meet unique economic and political conditions of America. In adopting the common law, the states provided tenants with protection against forcible entry. Conversely, landlords were aided in the repossession of their property upon the termination of tenancy by statutory judicial proceedings.

Self-help evictions, as based in common law, may be generally defined as any peaceable action, other than notice or the judicial process, taken by a landlord to evict a tenant wrongfully on the landlord's premises. Typical methods of self-help eviction include changing the locks on exterior doors (before or after removing the tenant's possessions from the premises) and disconnecting essential utility services, such as electricity, water, or heat. Use of such methods creates a risk of damage to and loss of property by the tenant and the landlord. The dispossessed tenant may have to break a lock, door, or window in order to recover his or her withheld personal belongings or simply have a place to shelter the family. Further, lack of heat or electricity may ultimately lead to ruptured pipes and ensuing water damage.

More than twenty other states, including North Carolina, have banned self-help evictions. In the Commonwealth, although such evictions are prohibited under the Virginia Residential Landlord and Tenant Act (VRLTA), as many as 35 percent of the state's rental units are not covered by the Act. Thus, self-help evictions continue to be permitted and used throughout Virginia.

Several public policy and constitutional issues beg the question of why self-help evictions should be permitted to continue. First, in addition to the potential risk to property of both landlord and tenant, their use increases the potential for violent confrontations between landlord and tenant. Courts have also noted that, because self-help evictions involve the taking of property without affording notice or an opportunity to be heard, such conduct arguably involves a violation of due process.

The Virginia Housing Study Commission recommends banning self-help evictions in the case of all residential leases. More specifically, the Commission recommends prohibiting landlords from willfully diminishing or interrupting such essential services as utilities or refusing a tenant access to the rental unit except pursuant to a writ of possession. The Commission is of the opinion that the rights and responsibilities of all residential landlords and tenants are, in cases of eviction, best determined and vindicated peacefully and equitably in judicial proceedings.

### Appeal Bonds

Current Virginia law allows tenants to appeal a court order, pursuant to an action for eviction or unlawful detainer, rendered by a general district court. To remove a case from general district to circuit court, or to appeal an order for eviction or unlawful detainer, tenants are required by law to file an appeal bond of up to twelve months' future rent and three months' future damages.

Low- and moderate-income tenants are often not able to meet the current appeal bond payment requirements, and so their right to appeal an eviction is effectively denied. Moreover, because jury trials are not available in general district court, Virginia's appeal bond requirements effectively deny less affluent tenants the fundamental right to a trial by a jury of their peers on an issue as important as whether they may stay in their homes.

Of the eighteen states that currently require similar future payment security requirements to appeal eviction actions, Virginia's requirements are among the harshest. Both North Carolina and South Carolina recently have enacted legislation allowing appeals to be based on a tenant's undertaking to pay rent when due. Officials in these states report no adverse effects on court caseloads from frivolous appellate filings due to the enactment of the appeal bond reforms.

The Virginia Housing Study Commission has considered the possibility of recommending legislation that would provide tenants an alternative eviction appeal procedure similar to those of North Carolina and South Carolina. Such a system would allow tenants to file for an appeal by also filing a formal, legal agreement to pay their rent to the landlord as it becomes due. Under such agreement, the tenant would also pay to the landlord any unpaid prorated rent for the time period between judgment and the next rent due date.

Further, to ensure that the landlord's interests are protected, such agreement would stipulate that, in cases where the circuit court opined that the tenant had failed to abide by the terms of the agreement, the court would be mandated to dismiss the appeal and grant immediate judgment for possession of the premises to the landlord. In cases where a general district court judge determined that the tenant had committed a criminal or willful act which was not remediable, and which act constituted a threat to the health and safety of the landlord and/or other tenants, the judge would be mandated to increase the bond for appeal to an amount commensurate with the misconduct.

The Commission will continue to study this important issue and, if consensus can be reached prior to the 1994 General Assembly Session, recommend legislation accordingly. The Commission recommends that the Virginia Supreme Court maintain statistics on the numbers and disposition of actions for eviction and unlawful detainer in the Commonwealth, which statistics now are not maintained on a statewide basis.

### Tenants Terrorized by Other Tenants

At Virginia Housing Study Commission public hearings, the 1993 Virginia conference on homelessness co-sponsored by the Commission, and in other forums in which the Commission has participated, tenants have reported in detail that they were rendered homeless by the terror they felt for their health, safety, and welfare — and that of their


*Members and the Executive Director received gripping testimony related to the regional economy and homelessness at the Commission's 1993 public hearing in Abingdon. In attendance were (left to right): Barbara J. Fried, Jackie T. Stump, Stanley C. Walker, Alan A. Diamonstein, Nancy M. Ambler, James F. Almand, and Charles L. Waddell.*

***Preventing evictions, when reasonable and possible, is generally recognized as a key objective in preventing homelessness.***

children — because of the activity and actions of their fellow tenants. They testified, for example, that they were unable to sleep, night after night, because of gunplay, gunfire, drug dealing, drug usage, potential robbery and personal harm related to drugs, and ongoing noise and commotion by neighboring tenants and their guests.

The terrorized tenants were, in effect, constructively evicted because of such activity. Maryland has enacted a so-called "drug nuisance" statute (Md. S. B. 688-1991) which, if similarly enacted in Virginia, could serve to prevent such constructive evictions and, subsequently, tenants fleeing to shelters and the plight of homelessness. Under current Virginia law, landlords may immediately terminate a lease in the case of a non-remediable criminal or willful act which poses a threat to health or safety. However, even though the landlord may immediately terminate a lease in such case, he or she must then proceed under *Virginia Code* § 55-248.35 (unlawful detainer), which action and subsequent appeals can span a period of several months.

Under the proposed Virginia statute — the "terrorized tenants" statute — any Commonwealth Attorney, county attorney, city attorney, or community association (i.e., a nonprofit community-based tenants' organization) would be permitted to file a civil action to abate drug-related criminal activity or violent criminal activity. Appropriate statutory language could be included in Title 48, Chapter 3, of the *Virginia Code*, which chapter addresses the law of nuisance.

"Drug-related criminal activity," as defined, would mean either:

(a) The felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, a controlled substance, or (b) the felonious use or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance, except that such felonious use or possession must have occurred within one year before the date that the plaintiff provides notice to a tenant of an action under such statute. Drug-related criminal activity would not include such use or possession if the tenant could demonstrate that he or she had an addiction or a record of addiction to a controlled substance and had recovered from such addiction and did not currently use or possess controlled substances.

Evidence of the general reputation of the property would be admissible to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant, but would not, in and of itself, be sufficient to establish the existence of a nuisance under this statute. However, evidence that the nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing would not bar the imposition of appropriate relief by the court.

Other components of the proposed statute would provide that:

- An action under this statute would be required to be heard within fourteen days after service of process to the parties.
- The court could award court costs and reasonable attorney's fees to a community association that prevails as plaintiff in such an action.
- The statute would not abrogate any equitable or legal right or remedy under existing law to abate a nuisance.

Under such cause of action, the court, after notice and a hearing, could grant an order of possession to the landlord and would be required immediately to issue its writ of possession to the sheriff commanding execution of the writ within five days after its issuance. Further, if the property owner were a party to the action and knew or should have known of the existence of the nuisance, and failed to take the appropriate legal action to remedy the same, the court could order the property owner to submit for court approval a plan of correction to ensure, to the extent reasonably possible, that the property would not again be used for a nuisance.

The Virginia Housing Study Commission will continue to study the concept of a "terrorized tenants" statute prior to the 1994 General Assembly Session and, if consensus can be reached, recommend that such legislative initiative be introduced in that Session.

## ROOMS AND REGULATIONS

Increasingly, poverty and a general lack of affordable housing are cited as the two primary causal factors of homelessness. Indeed, while significant public and private resources are invested in programs intended to reduce and eliminate homelessness, for such programs to succeed, a full range of housing options must be available within Virginia's communities. These options include: emergency shelters to provide an initial means of assisting persons in a housing crisis; transitional housing to reestablish more homelike living arrangements; and an array of other permanent, affordable options appropriate to meet varied individual circumstances, including accessory apartments, shared housing arrangements, boarding houses, and single room occupancy (SRO) units. While such "nontraditional" housing types serve individuals and families with distinctly different characteristics, they share a common factor: few fit comfortably within a regulatory system designed to foster more conventional housing choices of persons with higher incomes.

To the extent that zoning, building, and other local regulations prevent or narrowly restrict housing options for low-income persons, they ultimately play a role in forcing tens of thousands of Virginians into a state of homelessness. Following are Virginia Housing Study Commission recommendations designed to encourage localities to permit affordable housing options consistent with communities' needs, health, safety, and welfare.

### Land Use

Local zoning ordinances adopted under the provisions of the state's current enabling legislation are potentially the most significant regulatory barrier to affordable housing alternatives. In order to regulate the use of land responsibly, localities clearly need the flexibility permitted under current statutes. However, several factors suggest that actions to remove some barriers may be appropriate.

- Single family zoning district regulations cause potential problems for accessory units, home sharing arrangements, and rooming houses. These impediments are less severe than the impact of zoning on SROs, transitional housing, and, particularly, emergency shelters.
- The lack of uniformity among local zoning ordinances inhibits these alternatives in some communities while encouraging their concentration in others. No standard definition of SRO, emergency shelter, or transitional housing is accepted across the state.
- Ordinances in different communities subject housing alternatives to differing regulatory procedures, sometimes permitting them by right and in other cases employing discretionary zoning. The conditions attached to discretionary permits also vary among localities. Thus, for example, even if two otherwise similar communities permit a shelter through a discretionary action, the conditions or limitations placed upon the shelter's operations could be relatively onerous in one case and inconsequential in the other.
- The state authorized local zoning in order to help its communities facilitate the orderly development and use of property. As uses, emergency shelters, SROs, transitional housing, accessory units, and other housing options are entitled to the same consideration as other residential, commercial, or industrial uses.

In the area of land use, the Commission recommends amending § 15.1 of the *Code of Virginia* to provide that the conversion of single family residences to include an accessory dwelling unit shall not be prohibited by local zoning ordinances. The legislation would continue to authorize localities to impose reasonable conditions to ensure compatibility with other permitted uses within the district.

***A uniform set of standards relating to essential management elements could serve as a model for land use regulations for emergency shelters.***

The Commission also directs the Virginia Interagency Action Council for the Homeless (VIACH) to draft uniform definitions of "emergency" or "homeless shelter" and "single room occupancy facility," and to report back to the Commission in 1994 with such draft language which the Commission will consider for possible inclusion in § 15.1-430 of the *Code*. The Commission further directs that, as part of its work plan, VIACH and other interested parties cooperate in developing site development and management standards for emergency shelters for the homeless. Shelters are currently subject to wide variations in local regulatory regimes, and a more uniform set of standards based upon an objective assessment of shelters, their sites, and essential management elements could serve as a model for local land use regulations.

## Building Regulations

Provisions of the Uniform Statewide Building Code (USBC) relating to increased fire safety and other concerns may have increased the cost of such nontraditional housing options as emergency shelters, transitional housing, and SROs. However, several considerations suggest that legislative intervention changing the provisions of the USBC as they relate to such options is unnecessary. For instance, the requirements of the USBC apply with equal force to any occupancy falling within a given classification based upon an assessment of the degree of hazard regardless of the socio-economic status of the occupants. Further, the built-in appeals process and the scheduled periodic revision of the USBC provide an appropriate and effective means for adjusting building code content to fit changing needs and circumstances. Building code revisions required in areas such as occupancy classifications to accommodate shelters and other housing alternatives may be pursued through the existing procedures of the major model code writing organizations or through the process followed by the Board of Housing and Community Development revising the USBC.

However, it is important that the unique circumstances of affordable housing options are considered in the development of building regulations designed to provide adequate, cost-effective protection for residents. Therefore, the Virginia Housing Study Commission recommends that, at future Virginia conferences on homelessness, one or more sessions focus on the impact of building regulations on affordable housing alternatives and provide advocates with additional information on the code revision process. The Commission also requests that the Board of Housing and Community Development actively solicit suggestions from shelter, transitional housing, and SRO sponsors for the revision of the USBC by assuring that appropriate organizations are included on the mailing list for notices as well as such agency publications as the *Code* Connection.

## Taxation

Transient occupancy (hotel and motel) taxes represent an important source of revenue for many localities, especially those heavily dependent on travel and tourism. Existing enabling legislation emphasizes that this is a tax on casual or short-term occupancies and not on more permanent residences, regardless of whether the facility is called a boarding house, hotel, residential hotel, or SRO.

Persons living for continuous periods of thirty days or more in SROs should be unaffected by the tax. However, under current Virginia law, persons with more casual housing arrangements, particularly those occupying units with daily rentals, may be vulnerable to the tax if they stay in the same facility for less than thirty days. Therefore, the Virginia Housing Study Commission recommends amending §§ 58.1-3819-20 of the *Code of Virginia* to exempt SROs from the transient occupancy tax and apply the same standard to municipalities by specific reference in these sections.

# HOUSE JOINT RESOLUTION 442: FIRE RETARDANT TREATED PLYWOOD

Under House Joint Resolution 442, the Virginia Housing Study Commission was requested by the 1993 Virginia General Assembly to study the problems associated with the premature failure of existing installations of fire retardant treated (FRT) plywood roof sheathing and to recommend actions to help resolve claims pending as a result of such failures. More specifically, the Commission was requested to consider the following:

- number of structures actually or potentially experiencing roof failures as a result of the premature deterioration of FRT plywood roof sheathing;
- estimated cost of remedying problems associated with the past use of FRT plywood; and
- remedies available to assure a swift and equitable resolution of the problem.

This Commission study follows a 1992 report, prepared by the Department of Housing and Community Development (DHCD) in response to House Joint Resolution 238 (1992), that focused on issues associated with the present and future use of FRT plywood and ramifications for relevant building code provisions. The 1992 report concluded that local building officials are not required to permit the use of FRT roof sheathing products, though they may do so taking into consideration recent Council of American Building Officials (CABO) evaluation service reports for certain FRT products. The Department also noted the apparent magnitude of problems associated with existing FRT installations and recommended a separate study to explore options for responding to them.

## THE PRODUCT AND ITS USE

FRT plywood has been treated, usually through a pressure process, with chemicals known to reduce flammability. The Building Officials and Code Administrators, International, Inc. (BOCA), whose model codes form the basis for Virginia's Uniform Statewide Building Code (USBC), first approved the use of FRT plywood roof sheathing in 1979. In 1984, CABO, whose code provisions may be used as an alternative to BOCA in the case of one- and two-family dwellings, permitted the use of FRT as an alternative to fire-rated parapet walls extending above the roof plane of attached dwelling units. In the absence of a parapet wall, the model codes generally specified the use of FRT plywood roof sheathing for a width of four feet on either side of the fire-rated wall(s) on the lot line. This alternative promised builders initial cost savings.

The manufacture and use of FRT sheathing increased along with the pace of home building in the later 1970s and early 1980s. As many as a dozen manufacturers marketed at least twenty different treatment products at various times during the 1980s. However, a small number of manufacturers accounted for most of the product. In the eastern portion of the country five wood treatment companies accounted for over 95 percent of the FRT plywood used during most of the previous decade.[1]

## NATURE AND SCOPE OF THE PROBLEM

In the mid-1980s, builders and individual homeowners began reporting serious problems with FRT plywood roof sheathing. Such problems included sagging, buckling, and bowing of roofs, as well as severe loss of strength, cross-grain checking, and general brittleness in individual panels. Some products were strongly associated with high levels of degradation of treated plywood; few or no problems were reported with others.[2]

Although FRT failures have occurred throughout the country, the incidence of serious problems has been far greater in the east and southeast. The products have been in service in these areas for the longest time and the regionally dominant model codes have long permitted their use. Other factors, including climatic conditions along the relatively warm and

humid east coast, may have contributed to the incidence of failures. The National Association of Homebuilders (NAHB) estimated in 1989 that affected roofs numbered no more than 250,000 nationwide with an estimated replacement cost of approximately $500 million.[3]

Local estimates of the extent of the problem vary. In 1990, Loudoun County officials estimated that between 2,000 and 3,000 roofs within its jurisdiction were suspect. The same county estimated potential repair costs at between $4 and $9 million. Since that time, individual homeowners, builders, and condominium associations have actually replaced the roof sheathing on approximately 700 units. A condominium association replaced four hundred roofs in a single development in the county at a cost of $1,200 per unit.[4]

Arlington County staff recently stated that some 2,279 town houses using FRT plywood sheathing had been built between 1981 and 1993. The 249 built between 1990 and 1993 used products that have not been prone to premature deterioration. Of the remaining 2,030 units, the County could verify that 700 of the roofs had been replaced at costs ranging between $1,800 and $2,200 per unit (a net cost of around $1.4 million).[5]

A representative of Fairfax County recently estimated that as many as 25,000 units may be at risk from the use of suspect FRT, although the precise number is not known.[6] One 79-unit condominium association in Chesterfield County is currently facing a $160,000 expense to replace degraded FRT sheathing.[7]

As the extent of the problem became more apparent, builders grew reluctant to use any FRT plywood sheathing products.[8] Instead, other construction methods providing equivalent levels of fire resistance have come into currency. The loss of confidence in the FRT product, locally-enacted bans on its use, and the initiation of extensive litigation by various parties altered the FRT market. The number of FRT products and manufacturers decreased sharply after 1988; only four principal manufacturers and a limited number of products are currently available.

## RESPONSES TO THE PROBLEM

### Manufacturers of FRT Products

Threatened with the total loss of the primary market for their products, the remaining wood treatment companies pursued a number of different courses. Many reformulated their products. The major manufacturers also followed a research and certification strategy to isolate the factors contributing to premature failure and verify the durability of reformulated materials.

As an expression of their confidence in their products, the remaining major manufacturers began offering warranties with varying conditions and terms. Hickson offers a forty year warranty and Hoover a twenty year warranty. The actual potential for enforcing these warranties and indemnifying builders/owners in the event of product failure also vary. Generally, the warranties specify compliance with applicable attic ventilation and structural and design requirements of the model codes as a condition for enforcement.

By 1993, there was evidence that a number of the products offered reasonable durability under commonly encountered temperature and humidity ranges. According to the NAHB, there have been no reported structural failures involving any of the products currently being manufactured by the three major producers.

### Building Contractors

Building contractors often found themselves in the middle of disputes resulting from FRT failures. While it was true that they had placed the material in service, most were unaware of potential problems with FRT until such problems received extensive publicity. First, contractors cut back on the use of FRT products, substituting other methods of fire-resistive construction. Second, a number of larger builders arranged with aggrieved home owners to share the costs of replacing prematurely deteriorated roofing.

Some builder/developers also tried another tack: suing FRT manufacturers for the recovery of damages. Although such legal actions were sometimes nominally successful — one 1989 case produced a reported $460,000 settlement — legal fees and other costs associated with litigation diminished the impact of the actual recovery.

Beginning in 1990, NAHB and major builders also negotiated with FRT manufacturers and other interested parties for the creation of a compensation fund as the best means for assuring that individuals would be reimbursed for damages or replacement costs. Negotiations stalled in 1992 and have not been resumed, and most of the parties involved in the effort have concluded that a nationwide agreement is not likely in the immediate future.[9]

### Individual Homeowners, Associations, Multifamily Unit Owners

Individual homeowners, condominium and similar types of property owner associations, and the subsequent owners of multifamily units constructed with FRT sheathed roofs have faced the biggest challenges. Despite the apparent national, state, and local magnitude of the FRT roof sheathing problem, many of those individual owners directly and adversely affected have been unable to obtain compensation due to the practical and legal constraints that have hobbled them.

## IMPEDIMENTS TO RECOVERY

Ironically, although the problem concerns the premature failure of a product, often the deterioration has taken place over a sufficiently long period to approach or pass critical cut-off points for regulatory or judicial intervention, thus foreclosing opportunities to pursue contractors or suppliers for violations of the building code, or manufacturers of suspect products. Even if the failure of the roof sheathing can be attributed to a USBC violation, the *Code of Virginia* mandates that prosecutions for such violations must commence within two years of the discovery of the offense by the owner or by the building official. This requirement is further conditioned upon the discovery of the violation within one year of the date of initial occupancy or use or the issuance of a certificate of use and occupancy, whichever is later.

Aggrieved parties alleging that the roofing failures resulted not from violations of the USBC but rather from the use of an inherently defective product encounter another statutory barrier. Under *Code* § 8.01-250, the statute of repose applicable to damage claims arising from defective improvements to real property bars the initiation of suits more than five years after the construction completion date. This statute was designed specifically to

*Alan Diamonstein with Commission member James F. Almand.*

reduce the vulnerability of manufacturers of ordinary building materials that are installed by others not under the direct control or supervision of the manufacturer. Because damaged FRT may not be discovered until five or more years have passed, the party seeking legal redress is barred from proceeding.

Even if a cause of action is theoretically possible, the potential monetary recovery to an individual homeowner is relatively modest and may be insufficient to justify the expense and time likely to be encountered in pursuing a settlement. In the aggregate, costs associated with the probable levels of FRT deterioration in Virginia are significant. However, the cases of individual homeowners may involve damages in the range of $2,000-$5,000. Of course, condominium associations and the owners of multifamily housing face greater costs and may therefore have both greater incentives to action.

In New Jersey, homeowners and other parties to FRT litigation recently reached a $50 million settlement. Eventually some 35,000 homeowners in that state may have roofs replaced. In New Jersey — unlike virtually all other states — home builders must enroll in a state warranty plan or a private plan that is at least the equivalent of the state plan. The non-judicial processes associated with resolving claims against contractors under the warranty system and the linkage with builder registration positions the state government to exert considerable leverage on involved parties, and provides an effective mechanism for processing claims and paying compensation without tapping into state funds. FRT damage was statutorily defined as a "major construction defect" subject to compensation so long as it occurred within the ten year warranty period. A 1991 legislative enactment enabling New Jersey to pursue indemnification through its existing statewide new home warranty act for claims involving FRT roof sheathing prompted the settlement.[10]

In 1992, the Maryland Office of the Attorney General reported that it had not brought suit on behalf of consumers because any claims the state would be likely to raise on their behalf were already covered in private class action suits pending. At lease one case was filed in Maryland as a class action representing all state homeowners who have FRT roof sheathing, with various manufacturers and wood treaters as defendants. However, the case was not expected to go to trial until 1994.[11]

Although various suits have been brought against individual FRT producers in Virginia courts, in most instances the wood treaters have either prevailed or settled out of court. In early 1992, for example, Hoover Treated Wood Products settled with NVHomes. In December 1992, however, a Fairfax County Circuit Court jury awarded a builder $434,000 in another suit brought against Hoover. These appear to be exceptions to the general trend against aggrieved consumers.

*Alan Diamonstein with Richmond Mayor Walter T. Kenney, Jr., prior to the Mayor's welcome of 1993 Governor's Conference attendees to Richmond.*

## RESPONSES CONSIDERED

The Commission considered the following limited options for addressing FRT problems in Virginia.

- The Office of the Attorney General was asked to examine the possibility of facilitating the formation of a group of aggrieved parties to pursue a class action against the remaining manufacturers or treaters of products highly correlated with premature degradation of the product. The Office advised that several factors generally preclude its active participation in such a suit. Suits between private parties lie outside the purview of the office, which is statutorily restricted to the representation of the Commonwealth and other specifically enumerated bodies. Thus, such a suit would have to be brought as a private action by the individuals who have suffered actual damages.

The Office also restated the statutory provisions, including the statute of repose, that make it extremely difficult for an individual homeowner to prevail against the wood treatment industry or individual wood preservers and treaters. Further, the damages threshold for entering a federal class action would prevent most individual homeowners from participating, leaving only such parties as condominium associations or major contractors as potential litigants via this route.

- Possible alternatives for establishing a compensation fund were also explored. Assuming that General Fund revenues would not readily be available for such an undertaking, some other non-general fund revenue source would be required. However, attaining an equitable apportionment of costs would likely encounter serious difficulties.

A compensation fund could be established on a statewide basis similar to the current contractor recovery fund, but it could be expanded to include a broader number of interested parties, including contractors, manufacturers, and others associated with the manufacture and use of FRT products. Individuals (including contracting businesses) with independently established policies or programs (meeting a defined standard) to provide compensation to individuals innocently affected by FRT degradation could be exempted from participation. Although this approach might offer a means to provide funding for those who have failed to secure redress through other means, it has the distinct disadvantage of requiring participation by those who may have played only a minor (or no) contributing role in creating the problem.

Local or regional funds could be established exclusively within those localities or portions of the state where the premature degradation of FRT roof sheathing has apparently been concentrated. This strategy would tend to exclude most individuals or firms not associated with FRT installations. Funding sources would be limited under this alternative. Consideration would have to be given to exempting individuals and firms providing compensation independently to building owners or other aggrieved parties. Building permit surcharges, additional license fees, or similar sources are technically feasible funding sources, but they would almost certainly fail to apportion costs equitably among responsible parties.

- The Commission also discussed banning the use of all FRT plywood roof sheathing in Virginia until the issue of FRT plywood reliability is resolved. Such ban would likely be more effective in preventing future problems than in remedying problems remaining from previous installations of these materials. Banning the use of specific products that have not been demonstrated to be defective could raise significant federal constitutional issues, including claims based on due process, equal protection, or commerce clause grounds.

## RECOMMENDATIONS

The Commission makes the following recommendations pursuant to FRT plywood use in the Commonwealth:

- The Commission requests that the Board of Housing and Community Development consider amending the Uniform Statewide Building Code to prohibit local building officials from accepting FRT plywood for use as roof sheathing unless the manufacturer provided nationally recognized test results or equivalent indicators of future product performance that address longevity of service under typical conditions of installation. The manufacturer would also be required to provide performance indicators related to product fire-retardant qualities, structural strength, and other characteristics.
- The Commission recommends the implementation of a cooperative product awareness campaign focusing on FRT products and their potential problems. The Home Builders Association of Virginia (HBAV) could develop one component, increasing the awareness of the pros and cons of FRT use among contractors and building design professionals. The DHCD could increase its emphasis on FRT issues as part of its training and certification activities for building officials and code enforcement personnel. Finally, the Department of Agriculture and Consumer Services (VDACS) could develop, in cooperation with HBAV, DHCD, and other appropriate parties, informational material to alert homeowners to possible problems related to FRT usage and the proper steps that may be taken to repair or replace deteriorated FRT material.

### Endnotes

1. NAHB National Research Center, Investigation of Problems and Solutions Relating to Fire Retardant Treated Plywood Roof Sheathing (NAHB, October 1989), 5, 19-21,25; NAHB National Research Center, Home Builders Guide, 5.
2. Susan LeVan and Mary Collet, "Choosing and Applying Fire Retardant-Treated Plywood and Lumber for Roof Designs," General Technical Report FPL-GTR-62 (Madison, WI: USDA, Forest Service, Forest Products Laboratory, June 1989).
3. NAHB National Research Center, Investigation of Problems, 21-24. Most of the affected units were located in New Jersey, the Baltimore-Washington CMSA, and Florida. (Statement of William C. Young, Director of Consumer Affairs/Public Liaison, NAHB to the VHSC, May 20, 1993, Arlington, VA.)
4. County of Loudoun, Department of Technical Services, "Fire Retardant Treated Plywood," September 24, 1990, 7.
5. Communication from Emory R. Rogers, Division Chief, Arlington County Inspection Services, May 25, 1993.
6. Statement of Brian Smith, Fairfax County Inspection Services, to VHSC, May 20, 1993, Arlington, VA.
7. Statement of Edward Shannon to VHSC, May 27, 1993, Richmond, VA.
8. Jacqueline L. Salmon, "Jury Awards Winchester Homes Damages in Plywood Roofs Case," Washington Post, December 5, 1992.
9. Salmon, "Jury Awards;" William Young, "FRT Roof Sheathing Negotiations Stalled," 15 NACAA News (August 1992).
10. Jacqueline L. Salmon, "Settlement Reached in Roofing Case," Washington Post, November 7, 1992. N.J.S.A. §§ 46:38-13, 46:38-15, 46:38-20.
11. Consumer Protection Division, Office of the Attorney General [Maryland], "Information Letter to Home Owners on Recent Developments Concerning Fire Retardant Treated Plywood (FRTP)," April 6, 1992.

# HOUSE JOINT RESOLUTION 489: BLIGHTED AND DETERIORATED PROPERTY

***Vacant and abandoned properties constitute a significant percentage of the total housing units in some Virginia communities.***

In Virginia, one of the major obstacles to revitalization efforts is the presence of blighted and deteriorated buildings within communities in many areas of the state. While some government office development and public housing development has occurred in blighted and deteriorated neighborhoods, such projects have not initiated general redevelopment or revitalization in the neighborhoods. It is increasingly evident that while private sector development activity is a required element of neighborhood revitalization, such investment usually will not be feasible in a real estate market containing and often dominated by unsightly and frequently unsafe structures. Blighted and deteriorated houses and buildings — particularly those which are vacant and abandoned — substantially impair or arrest growth and development of a neighborhood and often lead to an exodus of current businesses and residents, threatening a spread of blight to other properties and neighborhoods.

Although the causes of structural abandonment and neighborhood decay are complex, their devastating social consequences — crime, violence, and fires, to cite but a few — are relatively simple to ascertain. The relationship between abandonment and crime has been well documented. Abandoned structures provide an attractive and convenient forum for crime — for street gangs, prostitutes, and drug users — and as more criminals gravitate to these areas, an increase in violent crime is often the result. For example, as structural abandonment increased several years ago in Chicago's North Lawndale district, the murder rate rose by over 150 percent. Areas with a high degree of abandonment are invariably found to contain a correspondingly high degree of crime.

An increase in fires — both accidental and arson-related — is another major problem that accompanies abandonment. A comprehensive study of structural fires in Newark, New Jersey, for example, revealed that 21 percent of all fires occurred in abandoned structures. Similar statistics can be found in other cities. The fear of fire is so great in some abandoned areas that many insurance companies either refuse to insure nearby occupied buildings or set premiums so high that most area residents cannot afford them.

In sum, abandoned or severely deteriorated structures require increased public expenditures to protect health, safety, and welfare. Moreover, because such units often have low assessed values or are tax delinquent, localities receive little or no revenue from such property to help underwrite the increased dollars they require.

Recent statistics indicate that vacant and abandoned properties constitute a significant percentage of the total housing units in some communities in the Commonwealth. According to the 1990 U. S. Census, approximately seven percent of all housing units in urban areas of Virginia were vacant, and approximately two percent of these vacant units were described as "boarded up." In 1992, the City of Richmond reported 1,919 vacant structures within the City's boundaries, of which 689 were tax delinquent. Even on the fringe of Virginia's urban areas, vacant housing units represent over five percent of the total housing.

The Virginia Housing Study Commission was requested under House Joint Resolution 489 passed by the 1993 Virginia General Assembly to study and recommend remedies to address blighted and deteriorated structures in the Commonwealth. (Other 1993 executive and legislative branch studies focused on related issues such as community development and violence in blighted areas.) The Commission identified three major goals for addressing blighted and deteriorated structures:

- prevent buildings and houses from becoming vacant or abandoned for extended periods of time
- rehabilitate buildings that have been vacated or abandoned but have not become seriously deteriorated and that are structurally sound
- eliminate or clear seriously deteriorated and blighted structures from neighborhoods.

Following are the Commission's initial recommendations for achieving these goals.

## AUTHORIZED LOCAL OPTIONS

The *Code of Virginia* provides localities broad powers to acquire blighted and deteriorated properties in specified target redevelopment areas. A locality may select a slum, blighted, or deteriorated area and authorize a "conservation plan" to be prepared for such area. Under § 36-49.1 of the *Code*, the locality then may authorize any redevelopment and housing authority (RHA) to acquire property within such areas which is blighted or designated for public use in the conservation plan and rehabilitate or clear such property.

For abandoned property that is tax delinquent, the most effective action is to encourage new ownership by selling the property to enforce the locality's lien for real estate taxes. The successful bidder at the tax sale can gain title to the property and rehabilitate the structure so it may be safely occupied. Section 58.1-3965 of the *Code* permits the judicial sale of real property by filing a bill in equity if taxes have been unpaid for three or more successive years. The sale of property is also an appropriate action when the owner has died intestate or if there are no heirs capable of inheriting the estate.

Localities can also proceed against owners of property that is abandoned but not tax-delinquent under a claim of public nuisance. A local governing body may, after official action pursuant to §§ 15.1-29.21 or 15.1-11.2 of the *Code*, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body may abate, raze, or remove it, and bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required for abatement. Localities having an RHA may also encourage their local Authority to execute its power of eminent domain as granted through *Code* § 36-27, which section authorizes the right to clear, rehabilitate, and reconstruct blighted areas.

## UNIFORM STATEWIDE BUILDING CODE

The Board of Housing and Community Development recently revised the Uniform Statewide Building Code (USBC) relating to the maintenance of vacant property. First, the Building Maintenance Code, which may be enforced by local option, now provides that the exterior of structures, whether occupied or vacant, must be maintained in good repair so as not to pose a threat to public health, safety, or welfare.

In the event a property fails to comply with this requirement, a second change permits the local code official to declare a structure that fails to comply with the Building Maintenance Code a hazard or a public nuisance. Once the official declares a structure a public nuisance or unfit for human habitation, several options are available. The building must be made safe through compliance with code provisions or it must be vacated, secured against entry (e.g., by boarding), or taken down and removed. The local code official has explicit power to determine which action, including razing or removal, should be undertaken.

Finally, where the building owner fails to act, the local code official may have a structure razed or removed, and recover related costs from the owner. Under § 15.1-112 of the *Code*, a lien equivalent to a tax lien may be placed against the property to recover such costs.

## SPOT BLIGHT

Many Virginia neighborhoods are at risk of deteriorating because of one or more individual instances of blighted properties. While § 36-49.1 of the *Code* provides localities broad powers to acquire and clear blighted and deteriorating structures within targeted "conservation plan" areas, there is no similar authority for addressing "spot" problems of blighted property outside such designated redevelopment areas. Although housing authorities may use their power of eminent domain to acquire individual properties adjacent to an existing public housing development, they generally cannot use that power to address spot blight. Moreover, while RHAs are empowered under state law to acquire and rehabilitate property within those conservation areas they so designate following governing body approval of such designation, localities lacking RHAs are not empowered with similar authority to acquire and rehabilitate properties.

The Virginia Housing Study Commission recommends amending Virginia's Redevelopment Projects Law in Title 36 of the *Code* to permit housing and redevelopment authorities to utilize their power after receiving governing body approval to acquire and rehabilitate or clear individual blighted and deteriorated properties without the requirement of such properties being located in designated area-wide blighted zones ("conservation plan" areas). With a goal of preventing such property from becoming a threat to surrounding properties, the governing body could either approve the authority's plan or take action itself.

The legislation could closely follow Pennsylvania legislation designed to address spot blight. The Pennsylvania statute, which includes definitions for "blight," was enacted in 1978 and has been upheld through several legal challenges in that state's courts. A recent Attorney General's opinion concluded that, under current Virginia law, a locality does not have the authority to compel abatement or removal of "burned out" structures that do not present an imminent danger to the health or safety of the community. The locality must seek a judicial determination stating that because of the adverse economic and aesthetic impact on nearby structures, the burned-out property is a public nuisance.

The Pennsylvania statute provides eight different definitions that allow a locality to designate property as "blighted." Among those properties so designated is "any structure from which utilities, plumbing, heating, sewage or other facilities have been disconnected, so that the property is unfit for its intended use." Such language, if adopted in Virginia, would enable localities to address the problems of a blighted property before it becomes a threat to public health, safety, and welfare or seriously affects surrounding properties.

## BUILDING INSPECTIONS FOLLOWING CHANGE OF TENANCY

As previously noted, the *Code of Virginia* and the Uniform Statewide Building Code empower a local governing body to inspect and enforce building regulations for existing buildings. A 1986 Attorney General's opinion specified "that a warrant may be obtained to gain access to a premises for inspection purposes if such access has been denied to the [Building] Code official or his designee."

Several localities in the Commonwealth have recently required that buildings be inspected when there is a change of tenant or when rental property is sold and that a new certificate of use and occupancy be issued. While the intent of the heightened inspection and enforcement programs is to prevent multifamily units from becoming deteriorated, such programs are not authorized under Virginia law or regulation. In fact, legislation to authorize this practice was defeated by the 1993 Virginia General Assembly (House Bill 1997).

Currently, a certificate of occupancy is issued only upon completion of a new building or a change of use of a building. The Board of Housing and Community Development recently amended the USBC to increase local authority by allowing building officials to "suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC."

The Virginia Housing Study Commission recommends further strengthening local building code enforcement efforts by authorizing localities to require the issuance of certificates of compliance with current building regulations after inspections of buildings when rental tenancy changes or rental property is sold. Such authorization would be limited to buildings located in conservation and rehabilitation districts designated by the local governing body, or those in which a civic group has petitioned the governing body to conduct such inspections.

## OVERGROWN LOTS AND PEELING PAINT

While abandoned and deteriorating buildings are the most common indication of neighborhood blight, overgrown lots also are visual evidence of disinvestment. High grass and overgrown shrubbery are more than aesthetic issues; they also spell trouble for public health and safety. Section 15.1-11 of the *Code* authorizes localities to regulate the height of

grass and weeds on vacant property, but generally such regulations are enforced by health officials. Most building maintenance regulations, on the other hand, involve structural and safety concerns, and thus are regulated by officials from other departments. The Virginia Housing Study Commission recommends amending § 15.1-11 to extend current authorization for localities to control the growth of grass and weeds on vacant property as well as property on which buildings are located.

## STREAMLINING THE TAX SALE PROCESS

The lengthy and cumbersome tax sale process is itself an impediment to a locality revitalizing blighted and deteriorated structures within its neighborhoods. While the process is designed to provide maximum protection to property owners, it may not serve the interests of neighboring properties as well as it does those of tax-delinquent owners.

More specifically, a locality cannot initiate the sale of property to satisfy tax liens until the taxes have been delinquent at least three years following December 31 of the year the taxes were originally due. During this waiting period, the property, if abandoned or neglected, will further decay and be susceptible to arson and vandalism. In turn, it will become more difficult and costly to rehabilitate as each year passes, and will have a negative effect on surrounding properties.

### Clear Title

Another obstacle to the acquisition and revitalization of deteriorated property by localities is the inability to obtain clear title to such properties. Lien holders and those with title claims are often unknown and may not come forward until the locality has acquired and improved the property, creating a financial risk for localities. Lending institutions, which avoid offering loans for purchasing or rehabilitating property unless clear title is held by the applicant, generally require two years to lapse following a tax sale before making such loans. This two-year period follows the three-year period of delinquency. The result is continued vacancy and deterioration.

The Virginia Housing Study Commission recommends legislation that would require lienors and persons with title claims to enter their claims within ninety days after a locality announces and publishes its intention to acquire property. Such action would assure clear title at the point of sale, and expedite the rehabilitation of the properties to be sold.

### Written Notice

The Commission will also examine in further detail in 1994 the desirability and feasibility of substituting written notice for actual service of process to mortgage holders, trustees, and judgment creditors of the subject property. The Commission will solicit testimony on the issue at its annual public hearings as well as discuss the merits with the lending community and other interested parties.

### Sales Price

Section 58.1-3344 of the *Code* provides that unpaid property tax shall be a lien on the property and the party listed as owner shall be liable for the payment of taxes. When property is sold the purchaser becomes responsible for any tax liens. Tax liens on seriously dilapidated property can approach or exceed the assessed or fair market value of the property, which in turn effectively prevents a locality from selling or acquiring tax delinquent property. For example, if a minimum bid of seventy percent of a property's assessed value must be received before the property can be sold, when bidders fail to reach that level, the property cannot be sold, resulting in its remaining vacant and imposing a potential nuisance to the community.

The Virginia Housing Study Commission recommends amending the *Code* to provide an exception to the current tax delinquent sales process for those cases involving blighted and abandoned housing in which the locality has incurred expenses in title searches, advertising,

and other efforts involved in selling the property, but has not received a bid equaling the assessed value. The locality could then sell the property to the highest bidder (in many cases the locality itself) and in effect purchase the property for its own redevelopment purposes.

## FINANCIAL AND TECHNICAL ASSISTANCE FOR REVITALIZATION EFFORTS

Rehabilitation of blighted and deteriorated neighborhoods and prevention of an area's slide into decay are indeed expensive propositions, but critical ones for a number of the Commonwealth's older cities. Costs for the tax sale process alone can exceed $6,000 per property; demolition can add thousands more. Even modest rehabilitation of a property that has deteriorated can easily exceed a cost of $50,000. Many localities, already struggling with decreased tax revenues and increased municipal expenses, have neither the fiscal resources nor the staff capabilities to implement a comprehensive revitalization program for blighted areas.

The Commission considered a variety of possible funding alternatives to assist localities as they address deteriorating neighborhoods. In the face of a possible unprecedented state budgetary shortfall, the Commission does not anticipate newly allocated General Fund dollars. Neither does it favor a tax increase of any kind for this purpose.

However, the Commission recommends that the Virginia Housing Development Authority make available through its Virginia Housing Fund loan monies at below-market interest rates to provide localities, on a competitive basis, financial assistance to revitalize blighted neighborhoods. The Commission also notes that the Virginia Housing Partnership Fund, recommended by the Commission in 1987 and capitalized by the Virginia General Assembly in 1988, includes several component programs in which localities could participate to assist in revitalizing older neighborhoods. As originally conceived, the Partnership Fund was designed to be self-supporting in ten to twelve years if capitalized annually with an appropriation of $20 million. The Commission recommends that, if at all possible, allocations for the Fund be maintained at current levels or increased for the 1995-96 biennium.

The Commission further recommends that VHDA and the Department of Housing and Community Development develop a statewide clearinghouse for collecting and disseminating information and technical assistance to local governments, nonprofits, and neighborhood groups on the establishment and operation of an abandoned housing program. The clearinghouse could advise on existing legal options while advocating new and innovative ways to convert abandoned housing into affordable housing. Also, guidance could be offered on combining existing resources such as federal money, the Virginia Housing Partnership Fund, and the VHDA Housing Fund to improve abandoned housing for low income occupancy.

In addition, the clearinghouse could offer training seminars on abandoned properties, as well as assisting in the creating and training of neighborhood groups. Such "grassroots" organizations could address needs of their neighborhoods in such areas as housing rehabilitation, crime prevention, youth activities, aesthetic improvements, economic development, and other important issues.

## OTHER STRATEGIES

In its 1993 study of blighted and deteriorated housing, the Virginia Housing Study Commission focused primarily on neighborhood revitalization strategies related to locally authorized options and building codes. The Commission will continue its study of this critical subject in 1994, and will address, among other issues, neighborhood revitalization strategies such as tax sale non-cash bids, private sector involvement, and urban homesteading.

# STATEWIDE AFFORDABLE HOUSING DENSITY BONUS ORDINANCES

In 1989, at the recommendation of the Virginia Housing Study Commission, the Virginia General Assembly authorized a number of Virginia's localities to develop affordable dwelling unit (ADU) ordinances. Accordingly, §§ 15.1-491.8-9 of the *Code* allow designated localities to amend their zoning ordinances to require developers of higher density residential projects to construct housing for low- and moderate-income households in exchange for an increase in the number of units permitted in the development. Designation in the *Code* is based on a locality meeting one of several population thresholds, type of local governmental structure, or physical location related to one of these criteria. Currently, 18 localities are empowered to develop ADU ordinances under the existing statutes, and each year additional localities request authority to adopt such programs to assist in addressing housing needs.

Fairfax and Loudoun Counties are currently the only localities in Virginia which have actually adopted ADU ordinances. The Fairfax ordinance, which became effective July 31, 1990, is the model for language in *Code* § 15.1-491.9, which stipulates the regulations and provisions that may be included in an ADU ordinance.

The Fairfax County ordinance applies to all residential developments subject to a rezoning, special exception, site plan, or subdivision plat approval in the following situation: 1) the site is to be developed at a density greater than one dwelling unit per acre; 2) the site yields fifty units or more; and 3) the site is located within an approved sewer service area. There are some exemptions from the program. Developments that meet these conditions are allowed a 20 percent increase in density in exchange for the state-mandated 12.5 percent set aside for affordable housing single family attached or detached units. A development consisting of multifamily dwelling units with a proposed height of four stories or less and lacking elevators is permitted a ten percent increase in density and must set aside 6.5 percent of the total dwelling units for affordable housing.

Since the Fairfax program began in 1990, 27 affordable housing units have been sold, 27 are under construction and 334 have been approved for construction as set-aside units

*Alan Diamonstein with Lieutenant Governor Donald S. Beyer, Jr., following the Lieutenant Governor's address at the 1993 Governor's Conference on Housing.*

***The Commission recommends authorizing all Virginia counties, cities, and towns to adopt ADU ordinances.***

for low- and moderate-income households. (Income must be 70 percent or less of the median income for the Washington Standard Metropolitan Statistical Area to qualify.) Although the number of units sold and currently under construction is not great, the number of units approved for development is encouraging, particularly in light of the severe decline in the residential construction industry over the last several years.

In addition to density bonuses tied to affordable housing development, communities across the nation have been granting zoning bonuses to developers for a number of years to encourage the construction of amenities that will provide some type of benefit to the public. Typically, a locality's zoning ordinance requirements are relaxed in exchange for a needed public amenity, given a relationship between the proposed development (including the increase in density granted through a density bonus) and the amenity's mitigation of any adverse effects caused by the development. Density bonuses have been used successfully to develop parking areas, transit and transportation amenities, pedestrian access to buildings and transit stations, plazas, and day care centers, to name a few examples.

In Virginia, perhaps the most needed amenity is public transportation. Indeed, there is a direct link between affordable housing and public transportation, as increased demands on an area's transportation system will occur when housing development takes place. Further, individuals seeking affordable housing options are often the very ones who rely most heavily on public transportation. One example of a project qualifying for density bonuses might allow an equity contribution from the developer to help finance a new metro station that is being constructed in the vicinity of the housing project. Another option might allow a developer to receive a density bonus for agreeing to construct a pedestrian walkway and shelter bridging the new housing development with an existing bus line.

Because of the encouraging trends resulting from the Fairfax ADU ordinance and at the request of Virginia localities, the Virginia Housing Study Commission recommends amending § 15.1-491.9 of the *Code* to include all counties, cities, and towns in Virginia. The Commission also recommends amending the *Code* to allow localities with ADU ordinances to grant developers an additional density bonus of up to ten percent on affordable dwelling unit projects if the developer agrees voluntarily to offer appropriate contributions directed at construction or support of local mass transit needs. The value of such bonus increase should relate to the cost of the construction or support of the public transit improvement being proposed, and the local governing body would specify the available options in its zoning ordinance.

***Localities Currently Authorized to Adopt Affordable Dwelling Unit Ordinances***

| | | |
|---|---|---|
| Albemarle County | Fairfax City | Manassas City |
| Alexandria City | Fairfax County | Manassas Park City |
| Arlington County | Falls Church City | Petersburg City |
| Charlottesville City | Frederick County | Prince William County |
| Chesapeake City | James City County | Suffolk City |
| Danville City | Loudoun County | York County |

# VIRGINIA HOUSING DEVELOPMENT AUTHORITY LEGISLATION

## BONDS SECURED BY CAPITAL RESERVE FUNDS

Since 1973, the Virginia Housing Development Authority has issued bonds secured by capital reserve funds created under certain of its bond resolutions in accordance with the provisions of § 36-55.41 of the *Code of Virginia*. The capital reserve funds provide additional security to the bondholders by establishing a source of funds for the payment of the bonds in the unlikely event that the payments from the mortgage loans financed by the bonds are insufficient to pay principal and interest on the bonds. The capital reserve funds are initially funded from bond proceeds or monies of the Authority.

Section 36-55.41 requires that the VHDA notify the Governor annually as to whether the amount in the capital reserve funds is less than the minimum capital reserve fund requirement (i.e., the greatest amount of principal and interest coming due on the bonds in any future fiscal year). If there is a deficiency in the capital reserve funds, the Governor is to include in the gubernatorial budget, as an agency request, the amount of such deficiency, and the General Assembly is authorized, but not legally required, to appropriate monies to fund such deficiency. The bonds issued by the VHDA do not constitute debt of the Commonwealth, and the Commonwealth is not liable for such bonds.

In past years, VHDA has issued capital reserve fund bonds (also known as "moral obligation" bonds) for the financing of both single family and multifamily mortgage loans. Because of the additional security provided to bondholders by mortgage insurance on single family loans, the Authority has been able to issue single family bonds without capital reserve funds since 1982. However, because mortgage insurance is not feasible for its multifamily mortgage program, VHDA has continued to issue capital reserve fund bonds for that program. The capital reserve funds and the statutory provisions for the funding of any deficiency therein have enabled the Authority to obtain the necessary ratings from the rating agencies so that the bonds can be sold at an interest rate which is feasible to finance the multifamily developments.

The *Code* was amended in 1987 to provide a $300.0 million cap on the amount of future capital reserve fund bonds issued by VHDA. From July 1, 1987 (the date on which the cap first became applicable) to March 31, 1993, the outstanding principal amount of VHDA capital reserve fund bonds has declined by over $325.0 million as a result of redemptions and maturities and as a result of the Authority's policy of issuing such bonds only for the financing of its multifamily program.

In fiscal year 1993, VHDA committed to finance over 4,000 multifamily rental units to serve low- and moderate-income Virginians. The Authority anticipates that, without authorization for the issuance of an additional $300.0 million of capital reserve fund bonds, significantly fewer multifamily developments would be financed under its program subsequent to utilization of the remainder of the current $300.0 million cap.

The Virginia Housing Study Commission recommends legislation to permit the Virginia Housing Development Authority to issue, subsequent to July 1, 1994, notes and bonds in an aggregate principal amount of $300.0 million secured by its capital reserve funds. Such legislation would ensure that the Authority would be able to continue its multifamily bond program at the lowest possible interest cost, which ultimately translates to lower rental costs for Virginians residing in VHDA-financed multifamily units.

## SWAP AGREEMENTS

The Virginia Housing Development Authority currently issues long-term fixed rate bonds for the purpose of financing long-term fixed rate mortgage loans. Matching the interest rate and maturity of the bonds with the interest rate and maturity of the mortgage loans avoids the risk that the Authority's cost of borrowing will, at any time during the life of the

***Utilizing swap agreements, VHDA could provide adjustable rate mortgage loans and in so doing serve additional lower income Virginians.***

bonds, exceed the interest rate on its mortgage loans. However, alternative bond financing methods could provide adjustable rate mortgage (ARM) loans based upon short-term rates, which are generally lower than long-term rates. Such ARM loans would provide mortgage loan financing to lower income Virginians who would not otherwise be able to purchase their own homes.

One such alternative bond financing method utilizes "swap agreements." Under this method, the VHDA would issue its customary long-term fixed rate bonds but would use the bond proceeds to make ARM loans based upon short-term interest rates. In order to avoid the risk that short-term interest rates would be set at a level such that interest on the mortgage loans would not be sufficient to pay interest on the bonds, the Authority would enter into a swap agreement with another party (generally a financial institution) which would have a financial need to convert an adjustable rate obligation to a fixed rate obligation. The VHDA would agree to pay to the other party an amount based on an adjustable interest rate calculated in a manner similar to that of the adjustable interest rate on the Authority's mortgage loans, and the other party would agree to pay to VHDA an amount based on the fixed interest rate of the Authority's bonds. (This exchange of payments between parties is commonly referred to as a "swap.") In this way, VHDA can convert its fixed rate debt obligation into an adjustable rate debt obligation and thereby match its debt obligation with its adjustable rate mortgage loans.

The Authority may also consider another type of swap agreement proposal in which VHDA would issue short-term adjustable rate bonds, make long-term fixed rate mortgage loans, and swap the payments on such bonds with payments of the other party based upon a long-term fixed interest rate lower than that which the Authority would have received by issuing its own long-term fixed interest rate bonds. This proposal would have the effect of providing VHDA with long-term fixed rate financing with which to make long-term fixed rate mortgage loans at a lower interest rate. Various credit enhancement or liquidity agreements may be used to secure the payment obligations of the parties under the swap agreements described above.

The Virginia Housing Study Commission recommends legislation to permit the Virginia Housing Development Authority to enter into swap agreements and similar arrangements which would permit the financing of adjustable rate mortgage loans or would lower the Authority's costs of borrowing. Such legislation would be substantially the same as § 15.1-227.27 of the *Code of Virginia*, which authorizes counties, cities, and towns to enter into swap agreements.

*Alan Diamonstein, Chairman of the annual Governor's Conference on Housing, addresses more than 800 attendees at what is the largest housing event of its kind in the nation.*

# VIRGINIA MANUFACTURED HOUSING BOARD LEGISLATION

The Department of Motor Vehicles will continue to license manufactured home dealers until May 1, 1994, at which time the Virginia Manufactured Housing Board shall be the responsible licensing authority. In developing regulations for administering the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Law, the Board has identified several limitations with the language contained in the Law. Following are recommendations designed to ensure efficient and effective administration of the Manufactured Housing Law regulations, scheduled to become effective April 1, 1994.

## BROADER COVERAGE

Under § 36-85.16 of the *Code of Virginia*, a "manufactured home salesperson" is defined as a salesperson employed by or affiliated with a manufactured home dealer. Such salespersons are required to be regulated and licensed by the Virginia Manufactured Housing Board. Persons selling manufactured homes who are not employed by or affiliated with a dealer, however, are not included in the current definition of salesperson and therefore are not required to be regulated or licensed. For example, a salesperson for a manufactured home manufacturer or broker would not be required to be licensed under current statute. The Virginia Housing Study Commission recommends increasing consumer protection by requiring regulation and licensure of all manufactured home salespersons employed by or affiliated with manufactured home dealers, manufacturers, and brokers.

Virginia law also currently provides licensing requirements for any person who manufactures or assembles manufactured homes for sale in Virginia, whether they are residents or nonresidents of the Commonwealth. The residency requirements for licensure of manufactured home dealers and brokers, however, is not specified. The Commission recommends further increasing consumer protection by requiring all manufactured home manufacturers, dealers, and brokers associated with home sales in Virginia, whether residents or nonresidents of the Commonwealth, to be regulated and licensed.

## FEES

Section 36-85.19 of the *Code* specifies that the Virginia Manufactured Housing Board "shall levy and collect fees that are sufficient to cover the costs of the administration" of the Manufactured Housing Licensing and Transaction Recovery Fund Law. The statute is not specific on the type of fees that may be levied. The Board has determined that a fair fee system would require both a low annual fee per dealer and a fee for each unit sold. This system is designed to reduce the fee burden on small, low-volume manufactured home sellers. The Commission recommends clarification of the statute by specifying the power of the Board to collect both annual and per unit sold fees.

## ELIGIBILITY FOR PAYMENT FROM THE RECOVERY FUND

Current provisions of the *Code* provide that the "buyer" of a manufactured home who suffers any loss or damage because of the acts of a regulated party in violation of manufactured housing law or regulations is eligible to recover any losses from the Virginia Manufactured Housing Transaction Recovery Fund. However, other persons suffering loss or damage by such acts are not eligible for payments from the Fund. For example, a manufactured home dealer incurring a loss by fraudulent acts of a manufacturer would not be eligible to recover such losses.

The Motor Vehicle Transaction Recovery Fund (§ 46.2-1523 of the *Code*) allows any "person" suffering loss or damage from fraudulent or other acts in violation of motor vehicle law to be eligible to recover from the Motor Vehicle Transaction Recovery Fund. A

"person" is defined as "any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity." The Commission recommends providing Manufactured Housing Recovery Fund protections equivalent to those provided under motor vehicle law, and ensuring greater protection to all potentially damaged by acts in violation of manufacture housing law.

## TRANSACTION RECOVERY FUND REQUIREMENTS

Current Virginia law requires manufactured home dealers to pay fees into two different transaction recovery funds. Section 46.2-1508 of the *Code* specifies that every person licensed as a manufactured home dealer shall obtain a motor vehicle certificate of dealer registration. In order to obtain a certificate of dealer registration, § 46.2-1522 of the *Code* requires that the manufactured home dealer pay a fee that is designated for the Motor Vehicle Transaction Recovery Fund. Manufactured home dealers also are required effective May 1, 1993, to pay a $500 fee toward the Manufactured Housing Transaction Recovery Fund (§ 36-85.31 of the *Code*). The Commission recommends eliminating the double fee requirements currently imposed on manufactured home dealers, and providing that such dealers pay fees only for the Manufactured Housing Transaction Recovery Fund.

*Alan Diamonstein with Frances Davidson at her new home in Washington County financed in part through the Commission-recommended Southwest Virginia Housing Loan Fund.*

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