
**VIRGINIA
HOUSING
STUDY
COMMISSION**

**2003 Annual Report to the
Governor
and the
General Assembly of Virginia**

VIRGINIA HOUSING STUDY COMMISSION

General Assembly of Virginia

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Virginia House of Delegates
87th Legislative District
Norfolk

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

The Honorable William C. Mims
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33rd Legislative District
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The Honorable Bradley P. Marrs
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The Honorable Mary Margaret Whipple
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Mr. T. K. Somanath
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Executive Director and Counsel

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INTRODUCTION

Background

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 Thelma Drake serves as Chair of the Commission, and Delegate Jackie Stump serves as Vice Chair. Delegate Drake succeeds former Commission Chair Senator Bill Mims, who resigned the chairmanship in 2003 following his appointment as Chair of the Virginia Code Commission, but who remains an active member of the Housing Commission.

The Commission has long been recognized as a forum for new ideas in housing and community development, and as a focal point for developing consensus for such ideas in the form of landmark statutory, regulatory, and non-governmental initiatives. Nationally, the Commission is the only such entity that works closely with the public and private sectors, nonprofit organizations, and private citizens to develop workable and sustainable responses to housing and community development challenges and advocates for the implementation of those initiatives. Commission recommendations have led to homeownership for thousands of Virginians, job creation and retention in localities large and small, enhanced fire safety and building code consumer protection, and neighborhood revitalization across the Commonwealth.

1971 - 1987

From 1971 throughout the early 1980s, the Commission introduced numerous legislative initiatives, 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:

- o establishment of a state office of housing, now the Virginia Department of Housing and Community Development
- o establishment of the Virginia Housing Development Authority
- o passage of the Uniform Statewide Building Code, and establishment of the State Technical Review Board and local boards of building appeals

- o passage of the Virginia Residential Landlord and Tenant Act
- o passage of the Virginia Mobile Home Lot Rental Act
- o promulgation of design standards to ensure accessibility by disabled persons to public buildings
- o passage of numerous legislative initiatives to foster effective operation, management, and creativity of Virginia redevelopment and housing authorities
- o passage of the Virginia Condominium Act
- o passage of the Virginia Real Estate Cooperative Act
- o passage of the Virginia Timeshare Act
- o passage of legislation coordinating fire safety programs in Virginia.

1987 - 2002

Following a period of dormancy, the Housing Study Commission was reactivated in 1987. That year, 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 (now the Virginia Housing Conference).

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: creation and capitalization of the landmark Indoor Plumbing Program; a state tax credit program for landlords providing rent discounts to low-income elderly or disabled tenants; a legislative mandate that localities study affordable housing needs 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 the 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 credit program fostering rent discounts to low-income elderly or disabled tenants; and restoration of the Virginia Housing Partnership Fund to the Virginia General Fund Budget.

In its 1993 Session, the General Assembly adopted comprehensive Commission recommendations related to the operation and management of condominium, cooperative, and property owners' associations. The Assembly also adopted 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.

In 1994, the General Assembly approved Commission recommendations to ban self-help evictions in the case of all residential leases and allocate additional funding for the Virginia Homeless Intervention Program, both adopted to help prevent homelessness. In the area of blighted housing, the Assembly approved Commission recommendations which authorize localities to: acquire and rehabilitate or clear individual properties which constitute "spot blight" in a community; require the issuance of certificates of compliance with current building regulations after inspections of residential buildings, located in conservation and rehabilitation districts, where rental tenancy changes or rental property is sold; and control the growth of grass and weeds on vacant property as well as property on which buildings are located. The 1994 General Assembly also approved Commission recommendations authorizing all Virginia localities to develop affordable dwelling unit (ADU) ordinances and authorizing VHDA to issue adjustable rate mortgage loans.

In its 1995 Session, the General Assembly adopted two Commission recommendations relating to landlord-tenant law in Virginia. In response to requests by tenants seeking to make their neighborhoods more safe, the Commission initiated expedited eviction proceedings where a tenant has committed a non-remediable criminal or willful act which poses a threat to health or safety. In response to requests to help prevent eviction-related homelessness, the Commission initiated reform of Virginia removal bonds, fostering removal of eviction actions from general district to circuit court in cases not involving nonpayment of rent. The 1995 General Assembly also adopted the Commission's comprehensive package of legislation addressing blighted and deteriorated housing. These bills: address violations of the Virginia Uniform Statewide Building Code clarifying that every Virginia circuit court has jurisdiction to award injunctive relief in cases involving USBC violations and by mandating that local building departments enforce Volume II (Building Maintenance Code) of the USBC where the department finds that there may be an unsafe situation; foster local government removal of graffiti from public or private structures; assist localities to identify

and locate owners of blighted properties by requiring the name and address of the owner of real property in local land book records; and authorize localities without redevelopment and housing authorities to engage in "experiments in housing," such as homesteading programs.

The Commission's 1996 recommendations focused on expansive ("shrink-swell") soils, building code matters, and community land trusts. Its landmark legislation on soils and related building code issues was embraced by the General Assembly and set new standards in providing localities, the homebuilding industry, and homeowners a framework for addressing problem soils found statewide.

The 1997 General Assembly approved the Commission's package of legislation relating to such issues as preservation of affordable housing subsidized under federal programs and with subsidy contracts expiring; homeless children; common interest communities; and the composition of the state Board of Housing and Community Development.

The 1998 General Assembly adopted the Commission's legislation focusing on the following broad areas of study: strategies to foster installation of indoor plumbing; residential rental security deposit returns and interest rates; condemnation by public housing authorities; common interest community association issues; education and licensure issues relating to the multifamily residential housing industry; and allocations and production data for the Virginia Housing Partnership Fund.

In its 1999 Session, the General Assembly approved Commission legislative recommendations stemming from its three diverse and complex 1998 study issues: fire sprinkler systems in multifamily residential buildings; establishment of an entity to foster the preservation of affordable housing; and affordable assisted living options for Virginia's seniors. (The Commission issued some forty recommendations following its two-year comprehensive assisted living study.)

The 2000 General Assembly embraced the Commission's proposed comprehensive reorganization of the Virginia Residential Landlord and Tenant Act in a more logical and technically accurate format with clarified and updated provisions. Other Commission recommendations not requiring legislation addressed provisions of certain municipal services to homeowners by their common interest community associations and the localities in which such associations are located; carbon monoxide safety issues relating to chimneys, fireplaces, and vents for solid fuel-burning appliances; and the creation of a new foundation to preserve affordable housing in the Commonwealth.

In its first Session of the new millenium, the General Assembly unanimously adopted the Commission's eminent domain reform legislation. This comprehensive package of bills was crafted to ensure greater balance of rights and responsibilities of both local housing authorities redeveloping neighborhoods and property owners whose land, homes, and businesses lie in path of redevelopment. In addition, members of the 2001 Session adopted the Commission's bill to foster harmony, increased property values, and decreased litigation among common interest community associations through the establishment of a state liaison

position within the Virginia Real Estate Board. Commission 2001 proposals to refine further various provisions of the Virginia Residential Landlord and Tenant Act were also successful, as was Commission legislation designed to clarify that the Uniform Statewide Building Code supersedes the provisions of certain local ordinances.

The 2001 General Assembly also requested the Commission's assistance in studying ten housing-related bills and resolutions. To address the same, the Commission and its Work Groups held an unprecedented 30 meetings. Commission members and the Executive Director also participated in eight of nine Regional Housing Needs Forums convened at the request of the Virginia Secretary of Commerce and Trade, and the Commission was honored for its three decades of leadership by the Virginia Housing Coalition on the occasion of the Coalition's gala Twentieth Anniversary Celebration. Members of the 2002 General Assembly subsequently adopted the Commission's 2001 comprehensive recommendations relating to common interest community association reserve funds, rural homelessness, and eminent domain.

In 2002, the Commission addressed the following issues: reimbursement of certain litigation-related expenses relating to eminent domain; enforcement of fair housing law; problematic formulations of new building products; and predatory lending. From these studies there emerged landmark legislation, subsequently adopted by the General Assembly, including the following: creation and capitalization of a new Virginia Fair Housing Board; emergency authority for the Virginia Board of Housing and Community Development, after certain findings and a hearing, to establish interim performance standards and Uniform Statewide Building Code provisions for the installation, application, and use of such building materials, methods, or designs where failures of the same result in the need to protect the health, safety, and welfare of Virginia citizens; and major strengthening of the Virginia Mortgage Lender and Broker Act to address widespread predatory lending abuse.

2003 Work Program

The 2003 General Assembly requested that, pursuant to Senate Joint Resolution 357, the Commission address four broad subject areas: amelioration of mold in residential real estate transactions, elevator safety in residential and commercial buildings, "visitability" (a design concept focusing on accessibility of dwellings to physically disabled persons), and the development of a statewide housing policy for the Commonwealth. Then Commission Chairman Senator Bill Mims assigned these issues to four Work Groups, each chaired by legislative members of the Commission.

In addition to meetings convened by the Work Group Co-Chairs, Senator Mims and Delegate Thelma Drake convened three meetings of the full commission, including a May organizational meeting at which members received briefings from the Commission Executive Director and from the Directors of state and federal housing and community development agency partners; a September meeting at which Delegate Drake was elected Commission Chair, the Executive Director reported on the progress of the Work Groups, and the Commission received a report on housing recommendations of the state's *Olmstead* task force; and a November meeting at which, after reviewing issue papers and Work Group

recommendations, Commission members present reached consensus on the recommendations relating to mold, elevator safety, and visitability published in this report. The Commission will focus its 2004 work on development of a statewide housing policy for Virginia.

In conjunction with legislative, public information, and study activities, the Commission in 2003 also responded to hundreds of inquiries regarding housing and community development policy, finance, statutory, and regulatory issues. The Commission Executive Director also met regularly with board members and key staff of the Virginia field offices of the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture/Rural Development, the Virginia Department of Housing and Community Development, and the Virginia Housing Development Authority, as well as consumer advocates, government officials, and housing industry representatives from around the Commonwealth. In addition to serving as a member of the Boards of Directors of the Virginia Foundation for Housing Preservation and the Preservation Alliance of Virginia, the Director also participated in the national housing and community development arena, serving as a member of the Board of Directors of the National Housing Conference; as Chair of the American Bar Association Forum on Affordable Housing and Community Development Law/Committee on State and Local Programs, and as a representative to the ABA Commission on Homelessness and Poverty.

EXECUTIVE SUMMARY

The Virginia Housing Study Commission was requested in 2003, pursuant to Senate Joint Resolution 357, the Commission omnibus study resolution chief patroned by then Commission Chairman Senator Bill Mims, to undertake four key studies: amelioration of mold in residential real estate transactions, elevator safety in residential and commercial buildings, "visitability" (a design concept focusing on accessibility of dwellings to physically disabled persons), and the development of a statewide housing policy for the Commonwealth. Through reports from federal, state, and local government housing officials, the Commission laid the groundwork for its development of a statewide housing policy, which study will be the primary focus of its work plan for 2004. Following is a summary of the findings and recommendations, following review and discussion of Commission Work Group issue papers and recommendations relating to the respective study areas, of Commission members present at the Commission's final meeting of 2003.

Mold

In addition to its study of the mechanisms by which residential and commercial real estate transactions address the amelioration of mold, the Commission also was requested by the 2003 General Assembly to address Senate Bills 908 and 909 relating to mold in the workplace. The Commission focused its study in four areas: Uniform Statewide Building Code (USBC), recovery of insurance benefits by policyholders, Virginia Residential Landlord and Tenant Act (VRLTA), and mold in the workplace.

Given concerns expressed that certain USBC provisions may actually foster the growth of mold in Virginia structures, the Commission recommends that the Virginia delegation to the International Code Commission, the body that promulgates model building codes, raise such issues with the ICC and report back to the Housing Commission in 2004 on progress made in addressing the same. Given the presumption that the insurance industry would seek, through 2004 legislation, to limit recovery by policyholders relating to remediation of mold on covered premises, the Commission recommends that the industry await national and/or federal standards prior to seeking such limits in advance of a situation not yet determined to be problematic in the Commonwealth. Given concerns that the VRLTA should speak more directly to the possible accumulation of moisture and/or the presence of mold on rental premises, the Commission recommends VRLTA amendments that would clarify the rights and responsibilities of tenants and landlords regarding prevention, discovery, disclosure, and amelioration of the same. Given the Commission's assessment that issues relating to the workplace are more appropriately addressed, at least initially, by the Virginia Department of Labor and Industry, the Commission recommends that DLI review Senate Bills 908 and 909 and report back to the Commission on its findings in 2005.

Elevator Safety

In seeking to protect the safety of, and prevent serious injury to, the public using elevators and escalators, as well as mechanics servicing such equipment, the Commission recommends establishment of a certification and continuing education program for such mechanics, for

whom there currently are no minimum competency requirements. The program, which would be promulgated and enforced by the Virginia Board for Contractors, would become effective July 1, 2005. In crafting its recommendation, the Commission took note not only of the fact that two elevator-related fatalities -- both caused by mechanic error-- have occurred in the Commonwealth in the past 15 years, but also that elevator equipment is increasingly sophisticated and, given the construction of more multi-story buildings as the Commonwealth becomes more urbanized, increasingly installed in the Commonwealth's buildings.

Visitability

The concept of visitability focuses on three design elements to foster accessibility of dwellings to disabled persons: 1) one zero-step entrance to the building, 2) 32-inch wide doorways throughout, and 3) access to at least a half-bath on the main floor of the dwelling. Rather than mandate in new residential construction the incorporation of these three design elements, the Commission took the position that the more than thirty recommendations it proposes would heighten awareness and understanding by the housing industry and the public at large of accessibility issues, thus ultimately fostering voluntary construction of visitable homes. The Commission's recommendations are generally grouped in two subject areas: 1) public awareness, training, and technical assistance initiatives, including conferences, public events, Web links, and publications, education courses and course components, and recommendations relating to local redevelopment and housing authorities, and 2) financing initiatives.

MOLD

Issue

The Virginia Housing Commission was requested pursuant to Senate Joint Resolution 357, chief patroned by then Commission Chairman Senator Bill Mims, to study the mechanisms by which commercial and residential real estate transactions address the amelioration of mold. In addition, Senate Bills 908 and 909, both chief patroned by Senator Yvonne Miller and both relating to mold in the workplace, were referred to the Housing Commission for study by the Senate Committee on General Laws. Senator Mims requested Commission members Delegates Thelma Drake and Bradley P. Marrs to co-chair the Commission Work Group on Mold, to which Work Group he also appointed representatives of the real estate, homebuilding, and insurance industries, as well as architects, engineers, building officials, consumer advocates, and representatives of federal, state, and local governments.

Deliberations

At the first meeting of the Work Group, members were briefed on the background of Senate Bills 908 and 909 by Ms. Jodi Holtz, a Tidewater resident who has suffered serious health challenges allegedly stemming from her exposure to mold in her workplace, and who requested that Senator Miller introduce the bills. Following Ms. Holtz's presentation, The Honorable David Crump, Esquire, Director of Legal Research for the National Association of Home Builders, and Mr. Mark Ingrao, Vice President for Government Affairs/Virginia for the Apartment and Office Building Association of Metro Washington, provided the Work Group a comprehensive overview of current major national mold-focused studies underway or recently completed. Messrs. Crump and Ingrao stressed that no standards existed at the national or federal levels that provide guidelines as to whether mold actually causes illness or, if it does, at what levels of mold presence related illnesses may occur. Further, such standards, were they to be promulgated in 2003, would not be available prior to the Commission's completion of its 2003 work mandate.

In his report following Messrs. Crump and Ingrao, Mr. Ronald L. Gramm, Occupational Health Compliance Director for the Virginia Department of Labor and Industry, stated that the DLI had no mold-related studies or initiatives underway or in the planning stages. Mr. Vernon Hodge, Regulatory Administrator for the Virginia Department of Housing and Community Development, next reported to Work Group members on the application of the Uniform Statewide Building Code (USBC) to mold issues. Ms. Mary Bannister, Deputy Insurance Commissioner for the Virginia State Corporation Commission Property and Casualty Division, followed Mr. Hodge with an overview of how homeowners' insurance policies written in the Commonwealth address mold. Ms. Bannister noted that the SCC had seen evidence of non-renewal of certain such policies by certain insurers following policyholders' claims of water damage. She also observed that the insurance industry was expected to request the introduction of legislation in the 2004 General Assembly Session that would seek to limit insurance companies' coverage of certain mold-related claims. Finally, The Honorable John G. (Chip) Dicks, III, government affairs counsel for the Virginia Association of Realtors, provided suggested amendments to the Virginia Residential Landlord and Tenant Act (VRLTA) to provide more specific guidance as to the

rights and responsibilities of both landlords and tenants relating to the possible presence of mold in residential rental properties.

At the close of the first meeting, Delegate Drake appointed a task force of volunteers to address three specific issues raised in the meeting and report back to the Commission on its findings. Following are recommendations stemming from the task force deliberations as adopted by the Work Group, together with a report of action taken relating to such recommendations by Housing Commission members present at the Commission's final meeting of 2003.

Recommendations

Uniform Statewide Building Code

During task force and Work Group deliberations, it was noted by Work Group member Mr. Sheldon Leavitt, an architect and professional engineer specializing in mold-related architecture and engineering issues, that certain provisions promulgated under the USBC may actually foster the growth of mold in Virginia structures. Building officials present confirmed that there may indeed be inconsistencies in building codes applicable in Virginia. Because of the highly technical nature of such codes, the Work Group unanimously recommended that the Virginia delegation to the International Code Commission, the body that promulgates model building codes, raise such issues with the ICC and report back to the Housing Commission in 2004 on progress made in addressing the same. The Housing Commission subsequently adopted this Work Group recommendation.

Insurance Issues

Following extensive discussion regarding a proposal by the insurance industry to limit recovery by policyholders relating to remediation of mold on the covered premises, the Work Group recommended by consensus that the industry await national and/or federal standards regarding mold and not move forward with such legislation in 2004. Work Group members representing the realty and homebuilding industries, as well as consumer advocates and architects, repeatedly expressed concerns that the industry was moving in haste to address an issue that had not yet been determined to be problematic in the Commonwealth. The Housing Commission subsequently adopted this Work Group recommendation.

Virginia Residential Landlord and Tenant Act

The Work Group recommended by consensus amendments to the VRLTA that would set forth more clearly the rights and responsibilities of tenants and landlords regarding the possible presence of mold on the rental premises. Such proposed amendments would require as part of the written report of the move-in inspection disclosure by the landlord if there were any visible evidence of mold and, if such visible evidence were present, allow the tenant to terminate the tenancy or accept the dwelling "as is." Further, if such disclosure were to state that there was no visible evidence of mold in the dwelling unit, then such record would be deemed correct unless objected to by the tenant within five days after the

tenant's receipt of the move-in inspection report. In addition, landlords would be required to use reasonable efforts to maintain the premises in such a condition as to prevent the accumulation of moisture and mold growth and to respond promptly to any written notices from the tenants relating to the same. Similarly, tenants would be required to use reasonable efforts to maintain the dwelling unit and occupied premises so as to prevent the accumulation of moisture and the growth of mold and promptly to notify the landlord in writing of any moisture accumulation that occurs or of any visible evidence of mold. The Housing Commission subsequently adopted, with one opposing vote, this Work Group recommendation.

Mold in the Workplace

Finally, the Work Group recommended that, because issues relating to the workplace are more appropriately addressed, at least initially, by the Virginia Department of Labor and Industry (DLI) than the Housing Commission, DLI should be requested to review Senate Bills 908 and 909 and report back to the Commission in 2005 on its findings. The Housing Commission subsequently adopted, with one opposing vote, this Work Group recommendation.

ELEVATOR SAFETY

Issue

The Virginia Housing Commission was requested pursuant to Senate Joint Resolution 357, chief patroned by then Commission Chairman Senator Bill Mims, to study the need to establish a comprehensive elevator safety program to protect the safety of, and prevent serious injury to, the public using elevators and employees performing services to elevators in the Commonwealth. The genesis of the elevator safety language incorporated into SJR 357, the Commission's omnibus study resolution, was House Bill 1940 (creating the Elevator Safety Act), chief patroned by Delegate Thelma Drake. That bill was tabled in the House Committee on General Laws at the request of Delegate Drake and referred, also at her request, to the Commission. Senator Mims requested Commission members Delegates Jackie Stump and Glenn Oder to co-chair the Commission Work Group focusing on elevator safety, to which Work Group he also appointed representatives of the elevator manufacturing, installation, and repair industry and labor union, the real estate industry, and officials of state and local government.

Deliberations

The first meeting of the Elevator Safety Work Group began with a briefing on HB 1940 by the Honorable John G. (Chip) Dicks, III, the government affairs counsel who had initially requested introduction of the bill. Mr. Dicks stated that, "while Virginia currently has in place a good elevator safety program, there is always room for improvement." He noted that the bill, as introduced, would put in place mechanisms that would foster even fewer accidents and better safety for all.

Following Mr. Dicks' presentation, the Work Group received an overview of the Virginia Uniform Statewide Building Code (USBC) regulations and a local building official inspection process relating to elevator safety. That overview was provided by Messrs. Jack Proctor, Deputy Director of the Virginia Department of Housing and Community Development, and William D. Dupler, Chesterfield County Building Official. Following the briefing by Messrs. Proctor and Dupler, Mr. Eric Olson, Executive Director of the Virginia Board for Contractors, provided the Work Group an overview of that Board's regulations pursuant to elevator safety.

Extensive discussion followed the presentations, with much of it focusing on the relatively small number of elevator safety "incidents" reported in the Commonwealth in the past few years, together with safety requirements now in place. Two such fatal incidents, one in Lynchburg and one in Fairfax County, have taken place in Virginia in the past fifteen years. Both incidents were directly related to errors of elevator mechanics. Discussion also focused on the fact that elevator inspections are mandated by the USBC, while contractor licensure is mandated under Board for Contractors regulations. Work Group members took note of the statements by several members that escalators tend to be more dangerous than elevators.

Prior to adjournment, Delegate Oder, who chaired the meeting, announced the formation of two Work Group task forces comprised of volunteers to address in detail 1) USBC

regulations and 2) Board for Contractors regulations on point. A revised draft of Delegate Drake's bill, in which draft comments offered at the Work Group's first meeting were incorporated, was provided to task force members prior to their meetings as a starting point for their deliberations.

Task Force on USBC Issues

The USBC task force addressed the issue of the advisability of the appointment of a representative of the elevator/escalator industry to the Virginia Housing and Community Development (HCD) Technical Review Board. Mr. Proctor stated that it would be helpful to have the expertise of such a representative available to the Board. It was further noted that, as Virginia becomes increasingly urban in nature, there is a presumed increase in the number of elevators and a concurrent possible increase in the number of elevator/escalator issues that come before the Board. Concerns were expressed that the appointment by the Governor of such a representative should not be from a slate of nominees comprised only of elevator industry-related union members. In response, it was agreed that, should legislation be enacted that would provide for the appointment to the Board of a representative with expertise in the elevator industry, the HCD Deputy Director with purview over the USBC process should send a letter to all known elevator/escalator trade associations advising them to provide their nominations for such an appointment in a timely manner to the Governor. Following agreement on this point, the task force by consensus recommended to the full Work Group that the Governor appoint to the HCD Technical Review Board a representative of the elevator/escalator industry.

Task Force on Board for Contractors Issues

Some 400 elevator/escalator service mechanics are associated with about 100 firms licensed by the Virginia Board for Contractors. However, there are no minimum competency requirements for such mechanics. Task force members were unanimously concerned by the lack of such requirements. In response, members by consensus crafted and recommended to the full Work Group a certification program, promulgated and enforced by the Board for Contractors, to take effect July 1, 2005, for those mechanics who actually service elevator and escalator equipment through access "inside the control panel." Given that certain national trade associations already are developing such certification programs, the task force agreed that the Board for Contractors should accept the certifications issued by such national associations, provided that the national standards meet or exceed those to be promulgated pursuant to the Virginia certification program.

The task force also recommended that mechanics applying for certification prior to July 1, 2005, be deemed to have fulfilled the certification examination requirement upon demonstrating five years' experience in the elevator industry. However, given the increasing sophistication of elevator equipment, the task force sought to ensure that all mechanics remain current with industry innovation. Accordingly, a continuing education component was recommended as part of the certification program. Specifically, it was recommended that mechanics be required to attest to the completion of eight hours of continuing education as part of their biannual re-certification.

Recommendations

Following the task force meetings, concepts crafted by task force members were incorporated into a revised draft of proposed legislation, which draft was then provided to task force members and the full Work Group, as well as all parties who had notified the Commission of an interest in the study. Three comments regarding the draft legislation were received, and all were addressed prior to the meeting of the full Work Group at which the draft was considered. Work Group members by majority vote adopted the recommendations of the task forces and recommended the same to the Housing Commission. Following are those recommendations, together with a report of action taken relating to the same by Housing Commission members present at the Commission's final meeting of 2003.

1. Appoint a representative of the elevator/escalator industry to the Virginia Housing and Community Development Technical Review Board. The Housing Commission subsequently declined to adopt this Work Group recommendation.
2. Establish a certification program for elevator mechanics, with such program promulgated by and enforced by the Virginia Board for Contractors, to become effective July 1, 2005. (For purposes of the Work Group proposal, "mechanics" are generally defined as individuals engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining elevators, escalators, or related conveyances. However, persons performing maintenance not related to the operating integrity of an elevator, escalator, or related conveyance would not be required to be certified under the proposal.) The Housing Commission subsequently adopted, by consensus, this Work Group recommendation.
3. Include a continuing education component as part of the certification program for elevator mechanics. The Housing Commission subsequently adopted, by consensus, this Work Group recommendation.

VISITABILITY

Issue

The Virginia Housing Commission was requested pursuant to Senate Joint Resolution 357, chief patroned by then Commission Chairman Senator Bill Mims, to study possible visitability initiatives for the Commonwealth. The genesis of the visitability language incorporated into SJR 357 were four bills on point introduced in the 2003 Session of the Virginia General Assembly. Those bills -- two each introduced by Senator Linda T. (Toddy) Puller and former Delegate James F. Almand -- would have required that certain single family dwellings constructed using federal, state, or local government funds meet minimum standards for visitability.

The concept of visitability, or the visitability"movement," as some would say, focuses on three design elements to foster the accessibility of dwellings to disabled persons: 1) one zero-step entrance leading into the dwelling, 2) doorways that are 32 inches wide throughout the dwelling, and 3) basic access to at least a half-bath on the main floor of the dwelling. At the request of the patrons, the bills were tabled in the respective Senate and House Committees on General Laws and instead referred to the Commission for study. Senator Mims requested that Senators Mary Margaret Whipple and Martin E. Williams co-chair the Commission Work Group focusing on visitability, to which he also appointed representatives of the disability community, the nonprofit and for-profit housing industry, and federal, state, and local governments.

Deliberations

Four meetings of the Visitability Work Group, each chaired by Senator Whipple, were convened. At the first meeting, Work Group members were briefed by Mr. John Cancelleri, Virginia Fair Housing Administrator, on the relationship of fair housing laws to visitability issues. Mr. Jack Proctor, Deputy Director of the Virginia Department of Housing and Community Development, followed Mr. Cancelleri with an overview of the relationship of the Americans With Disabilities Act and the Virginia Uniform Statewide Building Code to visitability. Mr. Proctor's presentation was followed by an interactive dialogue among Work Group members and Ms. Joy Weeber, an educational psychologist who survived a childhood bout with polio. The dialogue focused on the relationship of what our culture teaches us about disability, and how those teachings relate to the concepts of universal design and visitability. The dialogue served, as Senator Whipple observed, to allow the Work Group to begin by focusing not necessarily on how to address the challenge before the Group, but why. In conclusion, Dr. Bill Fuller, who also survived childhood polio, provided a practical discussion of cost factors in universal design in the Commonwealth. Dr. Fuller, Treasurer of Housing Opportunities Made Economical (HOME) and a housing initiatives officer at the Virginia Housing Development Authority, provided the information based on his personal experience as a successful developer of housing, utilizing universal design standards, for persons with disabilities.

At the Work Group's second meeting, members were briefed by Mr. David Ansell, Spotsylvania County Commercial Plan Reviewer, on concerns regarding the visitability legislation by the Virginia Building Code Officials Association. Lucia Anna (Pia) Trigliani,

an attorney specializing in community association issues and immediate past president of the Washington Metro Chapter of the Community Associations Institute, then briefed Work Group members on the Americans With Disabilities Act and the Fair Housing Act as they relate to common interest communities. Following Ms. Trigiani's presentation, Ms. Barbara Gilley, Chair of the *Olmstead* Task Force Housing Issues Group, briefed members on visitability initiatives in other jurisdictions, and the Housing Commission Executive Director provided a roster of possible Commission initiatives on point.

At its third meeting, the Work Group focused on two categories of possible visitability initiatives for the Commonwealth: initiatives with a basis in public awareness, training, and technical assistance, and initiatives with a basis in housing finance mechanisms. Senator Whipple appointed a task force of volunteers to focus on the finance-related initiatives.

At its fourth meeting, the Work Group unanimously adopted visitability-related recommendations, which follow, focusing on public awareness, training, and technical assistance. The Work Group also adopted by consensus the following recommendations, referred by its task force, relating to housing finance initiatives designed to foster visitability in the Commonwealth.

Some Work Group members, disabled themselves and/or advocates for the disability community, expressed disappointment and frustration that the majority of Work Group members declined to refer to the full Commission for adoption recommendations that would mandate in new construction the incorporation of the three key design elements critical to visitable dwellings. However, the majority of Work Group members took the position that the more than thirty recommendations being proposed to the Commission would heighten awareness and understanding by the housing industry and the public at large of accessibility issues, thus ultimately fostering voluntary construction of visitable homes.

Housing Commission members present at the Commission's final meeting of 2003 subsequently adopted, with one opposing vote, all such Work Group recommendations.

Recommendations

I. Public Awareness, Training, and Technical Assistance Initiatives

Conferences, Public Events, Web Links, and Publications

- o Pre-conference training at annual Governor's Conference on Housing sponsored by the Virginia Department of Housing and Community Development (DHCD), Virginia Housing Development Authority (VHDA), and Virginia Housing Study Commission (VHSC)
- o Award category for Governor's Housing Achievement Awards, presented annually at the Housing Conference

- o Award category for local homebuilders' associations
Parade of Homes awards
- o Award category for Home Builders Association of Virginia
Achievement Awards
- o Links from VHDA and DHCD Web sites to Web sites of the
National Association of Homebuilders (NAHB) and
North Carolina State University Center on Universal Design,
both of which Web sites offer extensive information on
visitability options and universal design
- o Inclusion of references to NAHB and NCSU Universal Design Center
in the annually-published VHDA Housing Directory

Education Courses and Course Components

- o Component in VHDA homebuyer course
- o Component in U.S. Department of Housing and Urban Development
(HUD) homebuyer course
- o Universal design course for inclusion as part of NAHB
Certified Graduate Builder Program and Master Builder Program
- o Continuing education courses (optional) for Realtors
- o Continuing Legal Education (CLE) courses (optional) for attorneys,
particularly marketed to real property and local government attorneys
- o Courses (optional) for community association developers, board members,
managers, and attorneys
- o Recommended adoption by community associations of policies fostering
visitability
- o Education course (mandatory and linked to certification) for
local building officials
- o Component course (mandatory), focusing on the federal and Virginia
Fair Housing Acts and the federal Americans With Disabilities Act,
as part of the DHCD Building Code Academy for local building officials

Local Redevelopment and Housing Authorities (RHAs)

Work Group discussions included concerns expressed by several members that certain local redevelopment and housing authorities in the Commonwealth are not in compliance with the federal and Virginia Fair Housing Acts and/or the federal Americans With Disabilities Act. As noted, Housing Commission members present at the Commission's final meeting of 2003 adopted, with one opposing vote, all Work Group recommendations, including the following relating to local RHAs:

- o Education courses on point (optional) offered through the Virginia Association of Housing and Community Development Officials
- o Self-education by local RHAs relating to visitability concepts as well as legal requirements of the Fair Housing Acts and Americans With Disabilities Act
- o Recommended appointment of a representative of the disability community to the board of commissioners of each local RHA in the Commonwealth
- o Amendment of the Virginia Redevelopment and Housing Authorities Act to mandate compliance by RHAs with the Fair Housing Acts and the Americans With Disabilities Act.

Subsequent to the Housing Commission meeting at which the above recommendations were adopted, the Commission was apprised by a VAHCDO representative that, according to the U.S. Department of Housing and Urban Development, which has certain oversight relating to local RHAs, only two Virginia RHAs are not in compliance with provisions of the Fair Housing Acts and/or the Americans With Disabilities Act. Accordingly, Housing Commission members present at the Commission's January 2004 meeting unanimously concluded that the Commission's proposed amendment of the Virginia RHAs Act would constitute not only unnecessary legislation but also a demeaning rebuke to the excellent RHAs in the Commonwealth, the vast majority of which already are meeting or exceeding federal guidelines regarding accessibility.

Architects Licensed in Virginia

Work Group discussions included concerns expressed by architects, developers, and advocates for persons with disabilities that certain architects licensed in Virginia have designed multifamily homes that clearly are subject to provisions of the Fair Housing Acts and the Americans With Disabilities Act and that, on inspection, do not meet such legal requirements. Accordingly, the Work Group offered the following three recommendations, subsequently adopted, with one opposing vote, by Housing Commission members present at the Commission's final meeting of 2003, designed to address such documented deficiencies:

- o Mandatory courses on point for architecture degree candidates in the Commonwealth's post-secondary architecture degree programs
- o Mandatory section on point included in Virginia's registration examination for architects
- o Mandatory continuing education courses on point for architects licensed in Virginia.

Subsequent to the Housing Commission meeting at which the above recommendations were adopted, the Commission was apprised by Ms. Louise Ware, Director of the Virginia Department of Professional and Occupational Regulation, which agency has regulatory oversight of Virginia architects and was represented by a staff member serving on the Commission Visitability Work Group, of the following information.

Regarding the course requirement for architecture students, Ms. Ware suggested that dialogue among architecture school leaders and other interested parties may prove as useful as legislation in heightening the importance of proficiency of architects regarding accessibility design issues.

Regarding a mandatory section on the Virginia licensure examination for architects testing candidates' knowledge of federal and state accessibility design requirements, Ms. Ware pointed out that candidates for such license are advised to be familiar with such issues in preparation for the exam, which is administered by the National Council of Architectural Registration Boards. Ms. Ware also noted that, if the Commonwealth were to seek a separate exam section on point, then the state itself would need to develop and administer the exam.

Regarding mandatory continuing education courses on point for architects, unlike attorneys, realtors, and many other professionals licensed in the Commonwealth, architects licensed in Virginia are not required to update their skills relating to life-safety or any other design components following their licensure. Moreover, the state board that licenses architects studied the issue of mandatory continuing education in 1998 and recommended against such mandate. Ms. Ware suggested that an effort to mandate such continuing education "may encounter opposition." She also suggested that the Virginia Chapter of the American Institute for Architects (AIA), a voluntary membership organization, may be willing to implement the recommendation as a course topic offered to its members.

Following the receipt of Ms. Ware's information, the Commission received additional information, sent at her request, from DPOR to the effect that the Board for Architects had voted to support her memorandum to the Housing Commission in which she expressed concerns about the three recommendations relating to architects. Housing Commission members present at the Commission's January 2004 meeting voted to table the three recommendations with the understanding that the

Commission would monitor the issues in the coming year. The Commission further requested that its Executive Director work closely with Ms. Ware, the deans of Virginia's architecture schools, key leaders of the Virginia AIA Chapter, and the State Council of Higher Education to address the issues raised during Commission deliberations relating to deficiencies of certain architects.

II. Financing Initiatives

- o Mandatory award of extra points for Low-Income Housing Tax Credit applicants for whose projects the architect or designer certifies attendance at HUD's Fair Housing First program, the goal of which program is to ensure that architects are familiar with Fair Housing Act design standards**
- o Mandatory award of extra points for Commonwealth Priority Housing Fund applicants for whose projects the architect or designer certifies attendance at HUD's Fair Housing First program**
- o Mandatory visitability requirement for all homes served through the Virginia Indoor Plumbing Program (about 200 homes annually, utilizing about \$8 million) where such requirement is reasonably feasible and with the advise and consent of the homeowner(s) receiving Program assistance**
- o Language addressing the importance of visitability features recommended for inclusion in the Virginia Consolidated Plan and recommended for inclusion in such Plans of local HUD entitlement communities**
- o Incentives recommended for inclusion in the federal HOME program awards process, administered by DHCD to HUD non-entitlement communities, to encourage participating communities to incorporate visitability design features in the HOME programs they locally administer**
- o Incentives recommended for inclusion in the federal Community Development Block Grant (CDBG) program awards process, administered by DHCD to HUD non-entitlement communities, to encourage participating communities to undertake projects utilizing visitability design features**
- o Commonwealth Priority Housing Fund set-aside recommended for grants to foster visitability through a Home Improvement Pilot Program**
- o Consideration recommended by localities regarding opportunities for utilizing design features that foster visitability and aging in place in projects receiving federal funding through the HOME, CDBG, Housing Opportunities for Persons With AIDS, and Emergency Shelter programs**

- o Provision of information requested to the approximately 400 homebuyers annually borrowing downpayment assistance funds through the HOME/VHDA Regional Loan Fund that additional grant funds may be available to those desiring to make their homes visitable
- o Consideration requested by the Virginia Foundation for Housing Preservation (created originally by VHDA, DHCD, and the Housing Commission, with annual awards of about \$150,000 in zero-interest loans for affordable housing projects) to consider positively the development of visitable home projects
- o Acknowledging that, as a matter of public policy it is not right for the tax dollars of Virginia taxpayers who are disabled to pay for housing that is not accessible to them, a report is requested from DHCD and VHDA officials to the Housing Commission in 2005 on agency efforts, including any related pilot programs utilizing public funds, to foster visitability in the Commonwealth.

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