CODE OF VIRGINIA

Title 36

Housing

Title 36 - HOUSING

Chapter 1 - HOUSING AUTHORITIES LAW

Article 1 - GENERAL PROVISIONS

§ 36-1. Title of chapter

This chapter may be referred to as the "Housing Authorities Law."

1938, p. 447; Michie Code 1942, § 3145(1).

§ 36-2. Findings and declaration of necessity

A. It is hereby found and declared that:

1. Blighted areas exist in the Commonwealth, and these areas endanger the health, safety, and welfare of the citizens of the Commonwealth;

2. The elimination of blight and redevelopment of blighted areas through the designation of redevelopment areas and the adoption and implementation of redevelopment plans for such areas; the prevention of further deterioration and blight through the designation of conservation areas and the adoption and implementation of conservation plans for such areas; and the designation of individual properties as blighted under the "spot blight" provisions of this chapter are public uses and purposes for which public money may be spent and private property acquired by purchase or through the exercise of the power of eminent domain as authorized by this chapter, and are governmental functions of grave concern to the Commonwealth;

3. As a part of a redevelopment or conservation plan, it is a public purpose to provide public facilities including, but not limited to, roads, water, sewers, parks, and real estate devoted to open-space use as that term is defined in § 58.1-3230 within redevelopment and conservation areas; and

4. It is a public purpose to promote the availability of affordable housing for all citizens of the Commonwealth and in particular to provide safe, decent, and sanitary housing for those citizens with low or moderate incomes. To that end, (i) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low or moderate income and (ii) the sale or lease of land and the acquisition, construction, rehabilitation, and operation of residential housing units for persons of low and moderate incomes are necessary for the public welfare and are public uses and public purposes for which public money may be spent and private property acquired by purchase or through the exercise of the power of eminent domain as authorized in this chapter and are governmental functions of grave concern to the Commonwealth.

B. The necessity and the public purpose for the provisions hereinafter enacted are hereby declared as a matter of legislative determination.

1938, p. 447; Michie Code 1942, § 3145(2); 2006, c. 784.

§ 36-3. Definitions

The following terms, when used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Area of operation" means an area that (i) in the case of a housing authority of a city, shall be coextensive with the territorial boundaries of the city; (ii) in the case of a housing authority of a county, shall include all of the county, except that portion which lies within the territorial boundaries of (a) any city, and (b) any town that has created a housing authority pursuant to this chapter; (iii) in the case of a housing authority of a town, shall be coextensive with the territorial boundaries of the town as herein defined.

"Authority" or "housing authority" means any of the political subdivisions created by § 36-4.

"Blighted area" means any area that endangers the public health, safety or welfare; or any area that is detrimental to the public health, safety, or welfare because commercial, industrial, or residential structures or improvements are dilapidated, or deteriorated or because such structures or improvements violate minimum health and safety standards. This definition includes, without limitation, areas previously designated as blighted areas pursuant to the provisions of Chapter 1 (§ 36-1 et seq.) of this title.

"Blighted property" means any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards, or any structure or improvement previously designated as blighted pursuant to § 36-49.1:1, under the process for determination of "spot blight."

"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this chapter.

"City" means the same as that term is defined in § 15.2-102.

"Clerk" means the clerk or secretary of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

"Conservation area" means an area, designated by an authority that is in a state of deterioration and in the early stages of becoming a blighted area, as defined in this section, or any area previously designated as a conservation area pursuant to this chapter.

"County" means the same as that term is defined in § 15.2-102.

"Derelict building" means the same as that term as defined in § 15.2-907.1 or in § 36-152.

"Farm structure" means the same as that term is defined in § 36-97.

"Farmers of low income" means persons of low income who derive their principal income from operating or working on a farm.

"Federal government" means the United States of America, the United States Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

"Governing body" means, in the case of a city or town, the council (including both branches where there are two), and in the case of a county, the board of supervisors or other governing body.

"Housing project," means any work or undertaking: (i) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or (ii) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low and moderate income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (iii) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures or improvements, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

"Locality" means the same as that term is defined in § 15.2-102.

"Obligee of the authority" or "obligee" means any bondholder, trustee or trustees for any bondholders, or lessor demising to the authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

"Persons of low income" means persons or families determined by the authority to lack the amount of income which is necessary to enable them to live in decent, safe and sanitary dwellings.

"Persons of moderate income" means persons or families determined by the authority to lack the amount of income necessary to obtain affordable housing.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

"Redevelopment area" means an area (including slum areas), designated by an authority, that is in a state of blight that meets the criteria of a blighted area as defined in this section; or any area previously designated as a redevelopment area pursuant to this chapter.

"Slum" means any area where dwellings predominate that, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities, or any combination of these factors, is detrimental to safety, health, or morals.

"Spot blight" means a structure or improvement that is a blighted property as defined in this section.

"Spot blight abatement plan" means the written plan prepared by the owner or owners of record of the real property to address spot blight. If the owner or owners of record of the real property fail to respond as provided in § 36-49.1:1, the locality or the authority can prepare a spot blight abatement plan to address the spot blight with respect to an individual commercial, industrial, or residential structure or improvement, but may only implement such plan in accordance with the provisions of § 36-49.1:1.

"Town" means the same as that term is defined in § 15.2-102.

1938, p. 447; Michie Code 1942, § 3145(3); 1966, c. 129; 2006, c. 784; 2009, cc. 181, 551.

§ 36-4. Creation of redevelopment and housing authorities

In each locality there is hereby created a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter, to be known respectively as the "..... (insert name of locality) Redevelopment and Housing Authority" (hereinafter referred to as "authority"); provided, however, that any authority not now activated shall not transact any business or exercise any powers authorized under this chapter until or unless the qualified voters of such locality shall by a majority vote of such qualified voters voting in a referendum held as provided in § 36-4.1, have indicated a need for an authority to function in such locality. The referendum to determine whether or not there is a need for an authority to function (i) may be called by the governing body by resolution or (ii) shall be called by the governing body upon the filing of a petition signed by at least two percent of the qualified voters registered in the jurisdiction, asserting that there is need for an authority to function in such locality and requesting the governing body to call such referendum.

The governing body may by resolution call for a referendum to determine whether there is need for an authority in the locality if the governing body believes it is appropriate for one of the reasons set out in § 36-2. In the case of a town located within the county, the town council shall first obtain the concurrence of the governing body of the county and the county redevelopment and housing authority prior to scheduling a referendum.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and

authorized to transact business and exercise its powers hereunder if the voters of the locality have so indicated in a referendum held pursuant to § 36-4.1, that there is need for the authority.

1938, p. 448; Michie Code 1942, § 3145(4); 1946, p. 276; 1947, p. 138; 1952, c. 427; 1958, c. 533; 2006, c. 784; 2009, c. 78.

§ 36-4.1. Holding of referendum; effect

A. If a referendum is called for under § 36-4, either by resolution of the governing body or upon the petition of at least two percent of the qualified voters as therein provided, the referendum shall be held at the next regularly scheduled election in the locality. The question on the ballot in such referendum shall be:

Is there a need for the redevelopment and housing authority to be activated in the county (or city or town) of ..... ?

The ballots shall be printed, the returns canvassed, and the results certified as provided in § 24.2-684.

B. If a majority of the qualified voters in such referendum shall indicate that there is a need for such authority, then the same shall be empowered to transact business and exercise the powers conferred by this chapter.

C. Once a referendum has been held, no other referendum on the same question shall be held in the county, city, or town within five years of the date of the prior referendum.

1952, c. 427; 1958, c. 171; 1982, c. 395; 2006, c. 784; 2009, c. 78.

§ 36-5. Reports

At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, including a financial statement and a statement of the maximum income limits for tenants in its projects and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter. All records of an authority shall be public records, and shall be open to inspection by the public during all business hours under such reasonable regulations as the authority may prescribe; provided that the term "records" shall include only completed contracts and transactions of the authority.

1938, p. 457; Michie Code 1942, § 3145(20); 1956, c. 643; 1958, c. 116.

§ 36-6. Cooperation in undertaking housing projects

Any county, city or town, for the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within such county, city or town, may:

(a) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to any such housing authority;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or rezone any part of such county, city or town; make exceptions from building regulations and ordinances; any city or town also may change its map;

(e) Cause services to be furnished to the housing authority of the character which such county, city or town is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by such county, city or town of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings;

(g) Purchase any of the bonds of a housing authority or legally invest in such bonds any funds belonging to or within the control of such county, city or town, and exercise all of the rights of any holder of such bonds;

(h) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(i) Enter into agreements with a housing authority respecting action to be taken by such county, city or town pursuant to any of the powers granted by this chapter.

1938, p. 457; Michie Code 1942, § 3145(21).

§ 36-7. Loans and donations to housing authority

Any city, town or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to such authority to enable or assist such authority to carry out its purposes or to agree to take such action, and may issue bonds to provide funds therefor.

1938, p. 458; Michie Code 1942, § 3145(22); 1983, c. 68.

§ 36-7.1. Liquidation of housing project

If the governing body of any county or city determines after a public hearing that the need for a housing project has ceased to exist and that such project should be liquidated it shall so notify the housing authority which shall proceed to liquidate the project following public advertisement of the sale thereof. Provided that no bid on such project shall be accepted which would result in a sum insufficient to meet the outstanding obligations of the authority with respect to such project and provided further that if the authority finds that the highest offered price is not as much as what it considers a fair value for the property, the authority shall notify the governing body of this fact. After such notification no further proceedings shall be had in the liquidation of the property except at the specific direction of the governing body.

1958, c. 83.

§ 36-8. Supplemental nature of chapter

The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law; except as may be expressly provided in the charter of a city or town specifically pertaining to such authority.

1938, p. 458; Michie Code 1942, § 3145(23); 1956, c. 615.

§ 36-9. Chapter controlling

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, except as may be otherwise expressly provided in the charter of a city or town, specifically pertaining to such authority, the provisions of this chapter shall be controlling.

1938, p. 458; Michie Code 1942, § 3145(24); 1956, c. 615.

§ 36-9.1. Exemptions from applicability of this chapter; conflicts in provisions of law

This chapter shall not be applicable to farm structures as defined in § 36-3 unless they are within the purview of the Uniform Statewide Building Code, as provided in § 36-99. Further, the creation of a redevelopment or conservation area, or designation of an individual structure as blighted pursuant to § 36-49.1:1, under the process for determination of spot blight, shall not abrogate the right to farm as protected in Chapter 3 (§ 3.2-300 et seq.) of Title 3.2. If there is a conflict between the provisions of this chapter and § 3.2-302, the provisions of § 3.2-302 shall control. If there is a conflict between the provisions of this chapter and § 25.1-106, the provisions of § 25.1-106 shall control. However, nothing herein shall be construed to preclude enforcement of local, state or federal criminal laws with respect to criminal activities occurring on a property where one or more farm structures are located.

2006, c. 784.

§ 36-10. Validation of establishment and organization of housing authorities and their contracts, undertakings, etc

(1) Organization and establishment. -- The establishment and organization of housing authorities in the Commonwealth of Virginia under the provisions of the housing authorities law together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto prior to June 27, 1942, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

(2) Contracts and undertakings. -- All contracts, agreements, obligations, and undertakings of such housing authorities entered into before such date relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions contract and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or

bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to cooperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things undertaken, performed or done with reference thereto before such date, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

(3) Notes and bonds. -- All proceedings, acts and things before such date undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds issued by housing authorities before such date, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

1942, p. 381; Michie Code 1942, § 3145(26).

Article 2 - COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES

§ 36-11. Appointment and tenure of commissioners; compensation

When the need for an authority to be activated in a city or county has been determined in the manner prescribed by law, the governing body of the city or county shall appoint not more than nine or less than five persons as commissioners of the authority created for such city or county. The governing body of the city or county may subsequently increase the number of commissioners of the authority to a maximum of nine. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of four years except that all vacancies shall be filled for the unexpired term. Except as may be otherwise expressly provided in the charter of a city or town specifically pertaining to such authority, no commissioner of any authority may be an officer or employee, of the city or county for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner may receive compensation as may be determined by a locality for each meeting of the authority attended by the commissioner. A commissioner shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

Any exercise of the powers of an authority by its commissioners after June 30, 1968, otherwise in compliance with applicable law, is hereby declared to be valid and effective in all respects, notwithstanding that the number of commissioners exercising the powers, though not exceeding seven from July 1, 1968, through June 30, 1978, and not exceeding nine thereafter, may have

exceeded the number appointed at the time the need for the authority to be activated had been determined in accordance with this section. No suit or action to vacate or set aside any exercise of said powers may be brought on the ground that the number of commissioners, though not exceeding seven from July 1, 1968, through June 30, 1978, and not exceeding nine thereafter, did exceed the number appointed at the time the need for the authority to be activated had been determined.

1938, p. 449; Michie Code 1942, § 3145(5); 1956, c. 615; 1958, c. 82; 1968, c. 696; 1978, c. 557; 1986, c. 357; 1987, c. 102; 1988, c. 601; 2007, c. 247; 2010, c. 311.

§ 36-11.1. Compensation of commissioners in certain counties

Notwithstanding any other provision of law, in any county having a population of more than 90,000 which adjoins three or more cities of the first class the redevelopment and housing authority of the county may, from funds of the authority and with the approval of the governing body of the county, pay each such commissioner not exceeding $25 for each day or part thereof spent in discharge of his duties as such commissioner; provided that no such commissioner or his successor shall be paid more than $300 in any year.

1958, c. 434.

§ 36-11.1:1. Compensation of commissioners generally

Notwithstanding any other provision of law, any redevelopment and housing authority may, from funds of the authority and with the approval of the governing body, pay each commissioner not exceeding $150 per month for services as a commissioner, in addition to such expenses as are allowed by law.

1970, c. 628; 1988, c. 367.

§ 36-11.2. Appointment of commissioners in certain cities

Notwithstanding any other provision of law to the contrary, whenever the members of a council of any city have been authorized to act as commissioners of a redevelopment and housing authority created under § 36-4 for such city, the council of any such city is hereby authorized to adopt a resolution appointing other commissioners for such authority in accordance with § 36-11, to serve as such in lieu of the members of council so acting.

The provisions of this section shall not affect the provisions of the charter of any such city authorizing the governing body thereof to provide for the activation of such authority.

1960, c. 593.

§ 36-12. Powers vested in commissioners; quorum

The powers of each authority shall be vested in the commissioners thereof in office from time to time. A majority of the commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number.

1938, p. 450; Michie Code 1942, § 3145(5); 1972, cc. 466, 782.

§ 36-13. Selection of chairman and other officers, agents and employees

The governing body of the city or county shall designate which of the commissioners appointed shall be the first chairman, but when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners. An authority shall select from among its commissioners a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation.

1938, p. 450; Michie Code 1942, § 3145(5); 1958, c. 82.

§ 36-14. Legal counsel

For such legal services as it may require, an authority may call upon the city attorney of the city or the attorney for the Commonwealth of the county or may employ its own counsel and legal staff.

1938, p. 450; Michie Code 1942, § 3145(5).

§ 36-15. Delegation of authority

An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

1938, p. 450; Michie Code 1942, § 3145(5).

§ 36-16. Repealed

Repealed by Acts 1970, c. 463.

§ 36-17. Removal of commissioners

For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority of any city or county may be removed by the governing body of such city or county; but a commissioner may be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

1938, p. 450; Michie Code 1942, § 3145(7); 1958, c. 82.

§ 36-18. Meetings and residence of commissioners

Nothing contained in this chapter shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, nor to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or such additional area, and who is otherwise eligible for such appointment under this chapter.

1942, p. 325; Michie Code 1942, § 3145(4m).

Article 3 - GENERAL POWERS OF AUTHORITY

§ 36-19. Enumeration of powers

An authority shall constitute a political subdivision of the Commonwealth with public and corporate powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make, amend and repeal bylaws, rules and regulations, not inconsistent with law, to carry into effect the powers and purposes of the authority.

2. Within its area of operation, to prepare, carry out, acquire, lease and operate housing projects and residential buildings, and to provide for the construction, reconstruction, improvement, alteration or repair of any housing project, residential building, or any part thereof, and to construct, remodel or renovate any public building or other facility used for public purposes provided the authority is requested to do so by the governing body of the political subdivision wherein the public building or facility is located.

3. To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to include in any contract let in connection with a project, any provisions required to comply with any conditions which the federal government may have attached to its financial aid of the project.

4. In connection with any housing project: to lease or rent any dwelling, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards, to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

5. To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or security in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled.

6. Within its area of operation, to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where blighted or slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of blighted or slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the locality, the Commonwealth or any other political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

7. To make loans or grants for the prevention and elimination of blighted or slum areas and for assistance in housing construction or rehabilitation by private sponsors of any and all funds received through federal programs and any and all funds received from other sources, public or private including but not limited to, rehabilitation loans received pursuant to the provisions of § 312 of the Federal Housing Act of 1964, as amended and the Housing and Community Development Act of 1974.

8. Within its area of operation, to act as agent for a political subdivision or agency of the Commonwealth or for a federal agency in making construction or rehabilitation loans to persons of low or moderate income in accordance with the rules and regulations of the political subdivision or agency.

9. Within its area of operation to make grants, loans or refinance loans made by others for assistance in planning, development, acquisition, construction, repair, rehabilitation, equipping or maintenance of commercial, residential or other buildings; provided that prior approval of any such loan by the local governing body shall be required if the building is not located within a housing, redevelopment or conservation area, or rehabilitation area and provided further that any rehabilitation funded by any such grant or loan is in compliance with property maintenance standards contained in duly adopted redevelopment or conservation plans in effect in such area of operation.

10. To borrow money and issue evidence of indebtedness in the name of and for the use of the authority, to issue bonds and other obligations, and give security therefor, subject to such limitations as may be imposed by law.

11. To conduct examinations and investigations, and to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

12. With the approval of the local governing body or its designee, to form corporations, partnerships, joint ventures, trusts, or any other legal entity or combination thereof, on its own behalf or with any person or public or private entity.

13. To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other political subdivisions or public bodies shall be applicable to an authority unless the legislature shall specifically state.

1938, p. 450; Michie Code 1942, § 3145(8); 1971, Ex. Sess., c. 153; 1976, c. 510; 1977, c. 136; 1978, c. 679; 1982, c. 596; 1983, c. 27; 1984, cc. 350, 450; 1988, cc. 217, 416; 1995, c. 193; 2002, c. 548; 2006, c. 784.

§ 36-19.1. Special provisions; City of Roanoke [Not set out]

Not set out. (1952, c. 200; 1975, c. 575.)

§ 36-19.2. Powers limited by necessity for authority from or approval by governing body; public hearing on proposed budget

A. Notwithstanding the provisions of § 36-19, no authority heretofore or hereafter permitted to transact business and exercise powers as provided in § 36-4 shall make any contract for the construction of any additional housing not authorized or approved by the governing body on April 1, 1952, or acquire land for, or purchase material for the construction or installation of any sewerage, streets, sidewalks, lights, power, water or any other facilities for any additional housing not authorized or approved on such date, unless and until such additional housing shall have been authorized or approved by the governing body of the county or city in which the authority is authorized to transact business and exercise powers; provided, that this section shall not affect or impair the provisions of § 36-19.1.

B. Before any authority gives final approval to (i) its budget or (ii) any request for funding for submission to the governing body, the authority shall hold at least one public hearing to receive the views of citizens within the area of operation of the authority. The authority shall cause public notice to be given at least 10 days prior to any hearing by publication in a newspaper having a general circulation within the area of operation of the authority.

1952, c. 427; 2006, c. 784; 2007, c. 342.

§ 36-19.3. Repealed

Repealed by Acts 1960, c. 230.

§ 36-19.4. Referendum prior to making cooperation agreements for public housing projects in certain cities [Not set out]

Not set out. (1960, c. 490; 1975, c. 575.)

§ 36-19.5. Additional powers

A. In addition to the powers otherwise granted, an authority may acquire, subject to prior approval, after public hearing, of each such acquisition by the governing body of the county, city or town wherein the property to be acquired is located, any single-family or multi-family dwelling unit within the authority's area of operation by purchase, lease, or gift or through the exercise of

the power of eminent domain as provided in subsection B of this section, for development and redevelopment including, but not limited to, the renovation, rehabilitation and disposition thereof, when such authority has determined: (i) that such dwelling unit or other structure has deteriorated to such extent as to constitute a serious and growing menace to the public health, safety and welfare; (ii) that such dwelling unit or other structure is likely to continue to deteriorate unless corrected; (iii) that the continued deterioration of such dwelling unit or other structure may contribute to the blighting or deterioration of the area immediately surrounding the said dwelling unit or other structure; and (iv) that the owner of such dwelling unit or other structure, after sixty days' notice to the landowner by certified mail, citing § 36-19.5, has failed to correct the deterioration thereof.

B. A local governing body may, on behalf of an authority, acquire through the exercise of the power of eminent domain any single-family or multi-family dwelling unit within the authority's area of operation, but only for those purposes set forth in subsection A of this section.

1979, c. 424.

§ 36-20. Housing research and studies

In addition to all its other powers, an authority may, within its area of operation, undertake and carry out studies and analyses of the housing needs, and of the meeting of such needs (including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and the meeting thereof) and make the results of such studies and analyses available to the public and the building, housing and supply industries; and may also engage in research and disseminate information on the subject of housing.

1946, p. 278; Michie Suppl. 1946, § 3145(4r).

§ 36-21. Housing projects not to be operated for profit

It is hereby declared to be the policy of this Commonwealth that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with such authority providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city or the county. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient (a) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; (b) to pay, as the same become due, the principal and interest on the bonds of the authority; (c) to provide a margin of safety for making such payments of principal and interest; and (d) to create and maintain a reserve sufficient

to ensure the authority can pay the principal of and the interest on the bonds of the authority as the same shall come due.

1938, p. 452; Michie Code 1942, § 3145(9); 1975, c. 78.

§ 36-22. Rentals and tenant selection

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection: (a) it may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income; (b) it may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; (c) it shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an aggregate annual income in excess of the maximum income limits established by the authority for the purpose of determining what persons or families are of low income; and (d) at least thirty days before establishing or changing the aggregate annual maximum income limits for the purpose of determining what persons or families are persons of low income, an authority shall notify the governing body of the city or county thereof.

Nothing contained in this section or § 36-21 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or § 36-21.

1938, p. 452; Michie Code 1942, § 3145(10); 1958, c. 116; 1972, cc. 466, 782.

§ 36-22.1. Conveyance of streets; no trespass policy

Each housing authority shall adopt a "no trespass" policy designed to protect the premises controlled by such authority and residents from nonresidents who enter the premises for unlawful purposes or without any lawful purpose. In adopting such policies, the authority shall determine whether to petition a locality or the Commonwealth to close to the public and convey to the authority any streets serving authority property. Neither a locality nor the Commonwealth shall be required to grant the conveyance.

2004, c. 585.

§ 36-23. Housing authority operations in other municipalities

In addition to its other powers, any housing authority may exercise any or all of its powers within the territorial boundaries of any municipality not included in the area of operation of such housing authority, for the purpose of planning, undertaking, financing, rehabilitating, constructing and operating a housing project or projects or a multi-family residential building or buildings within such municipality; provided that a resolution shall have been adopted (a) by the governing body of such municipality in which the housing authority is to exercise its powers and (b) by the authority of such municipality (if one has been theretofore established by such municipality and authorized

to exercise its powers therein) declaring that there is a need for the aforesaid housing authority to exercise its powers within such municipality. A municipality shall have the same powers to furnish financial and other assistance to such housing authority exercising its powers within such municipality under this section as though the municipality were within the area of operation of such authority.

No governing body of a municipality shall adopt a resolution as provided in this section declaring that there is a need for the housing authority (other than a housing authority established by such municipality) to exercise its powers within such municipality, unless a public hearing has first been held by such governing body and unless such governing body shall have found in substantially the following terms: (a) that insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and (b) that these conditions can be best remedied through the exercise of the aforesaid housing authority's powers within the territorial boundaries of such municipality; provided that such findings shall not have the effect of establishing an authority for any such municipality under § 36-4 nor of thereafter preventing such municipality from establishing an authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk of the city or other municipality shall give notice of the time, place and purpose of the public hearing at least ten days prior to the date on which the hearing is to be held, in a newspaper published in such municipality, or if there is no newspaper published in such municipality, then in a newspaper published in the Commonwealth and having a general circulation in such municipality. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such municipality and to all other interested persons.

During the time that, pursuant to these findings, the aforesaid housing authority has outstanding (or is under contract to issue) any evidences of indebtedness for a project within the municipality, no other housing authority may undertake a project within such municipality without the consent of the housing authority which has such outstanding indebtedness or obligation.

1942, p. 324; Michie Code 1942, § 3145(41); 1984, c. 350.

§ 36-24. Cooperation of authorities

Any two or more housing authorities may join or cooperate with one another in the exercise, either jointly or otherwise of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects located within the area of operation of any one or more of such authorities. For such purpose any authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on its behalf with respect to any or all of such powers. Any authorities joining or cooperating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such

authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities.

1938, p. 453; 1942, p. 325; Michie Code 1942, §§ 3145(4n), 3145(11).

§ 36-25. Payments by housing authorities to other bodies

An authority may agree to make such payments to the city or county, the Commonwealth, or any political subdivision thereof, which payments such bodies are hereby authorized to accept, and to otherwise expend its funds in such manner as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this Housing Authorities Law.

1946, p. 278; Michie Suppl. 1946, § 3145(4q); 1970, c. 405.

§ 36-26. Aid from federal government

In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing projects or undertaking, within such area, constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable.

1938, p. 457; Michie Code 1942, § 3145(19).

§ 36-27. Eminent domain

A. An authority shall have the right to acquire by the exercise of the power of eminent domain any real property pursuant to a duly adopted redevelopment or conservation plan, or otherwise only in accordance with this chapter, after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such public purposes. An authority may exercise the power of eminent domain in the manner provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1. In condemnation proceedings evidence may be presented as to the value of the property including but not limited to the owner's appraisal and the effect that any pending application for a zoning change, special use permit application or variance application may have on the value of the property. The court may also determine whether there has been unreasonable delay in the institution of the proceedings after public announcement by the condemnor of a project that necessitates acquisition by the condemnor of a designated land area consisting of or including the land sought to be condemned. If the court determines that such unreasonable delay has occurred, it shall instruct the commissioners or jurors in such proceedings to allow any damages proved to their satisfaction by the landowner or landowners to have been sustained to his or their land during and because of such delay, in addition to and separately from the fair market value thereof, but such damages shall not exceed the actual diminution if any in fair market value of the land in substantially the same physical condition over the period of the delay.

B. Prior to the adoption of any redevelopment plan for a redevelopment area pursuant to § 36-49 or any conservation plan for a conservation area pursuant to § 36-49.1, an authority shall send by certified mail, postage prepaid, to the record owner or owners of every parcel of property to be acquired pursuant to such plan, at their last known address as contained in the records of the treasurer, the current real estate tax assessment records, or the records of such other officer responsible for collecting taxes in that locality, a notice advising such owner that (i) the property owned by such owner is proposed to be acquired, (ii) such owner will have the right to appear before the local governing body and present testimony with respect to the proposed redevelopment or conservation area, and (iii) such owner will have the right to appear in any condemnation proceeding instituted to acquire the property and present any defense which such owner may have to the taking. Such notice shall not be the basis for eligibility for relocation benefits. At the time it makes its price offer, the authority shall also provide to the property owner a copy of the appraisal of the fair market value of such property upon which the authority has based the amount offered for the property, which appraisal shall be prepared by a real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

C. In all such cases the proceedings shall be according to the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, so far as they can be applied to the same. No real property belonging to the city, the county, the Commonwealth or any other political subdivision thereof may be acquired without its consent.

1938, p. 453; Michie Code 1942, § 3145(12); 1958, c. 518; 1972, cc. 466, 782; 1989, c. 593; 1998, c. 880; 2000, c. 1029; 2001, c. 729; 2002, c. 272; 2003, c. 940; 2006, cc. 586, 784.

§ 36-27.01. Plan for alternative housing of persons displaced by condemnation, conversion, etc

In any condemnation proceeding which involves the taking or conversion of properties populated by low and moderate income families in multi-family housing projects owned or controlled by the redevelopment and housing authority, or with respect to the development or redevelopment of any property owned or controlled by it, the authority shall adopt a plan of relocation identifying alternative housing for the persons who will be displaced. No conversion of multi-family housing complexes to industrial use shall be authorized prior to the identification of alternative housing required herein.

1983, c. 518.

§ 36-27.1. Same; damages to leasehold interests in certain cities [Not set out]

Not set out. (1966, c. 383; 1975, c. 575.)

§ 36-27.2. Limitations on certain housing authorities; exception

A. Notwithstanding the provisions of § 36-27 and except as provided in subsection B, no housing authority transacting business and exercising powers as provided in § 36-4 in the City of Norfolk shall be authorized after July 1, 2007, to acquire by the exercise of the power of eminent domain,

any real property located within the boundaries set forth in the Conservation and Redevelopment Plan (the Plan) for the East Ocean View Conservation and Redevelopment Project adopted July 1989, as amended by Amendment No. 1 to such plan adopted September 1992.

The provisions of this subsection shall not apply to any such real property for which an offer has been made by such housing authority or for which such authority has initiated condemnation proceedings prior to July 1, 2007.

B. The City of Norfolk and the housing authority shall not be precluded from adopting (i) a new redevelopment plan, in accordance with the provisions of §§ 36-27, 36-49, and 36-51, which designates a redevelopment area that includes real property for acquisition that was previously included within the Plan, or (ii) a new conservation plan, in accordance with the provisions of §§ 36-27, 36-50.1, and 36-51.1, which designates a conservation area that includes real property for acquisition that was previously included within the Plan.

2002, c. 540; 2007, c. 786.

§ 36-28. Planning, zoning and building laws

All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

1938, p. 453; Michie Code 1942, § 3145(13).

Article 4 - BONDS, TRUST INDENTURES AND MORTGAGES

§ 36-29. Power to issue bonds; liability in general

An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it or for the purpose of refunding loans made by another entity if such loans could have been made by the authority. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing):

(a) Bonds on which the principal and interest are payable:

(1) Exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; or

(2) Exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds; or

(3) From its revenues generally.

(b) Bonds on which the principal is payable solely from annual contributions or grants received from the federal government or received from any other source, public or private.

Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government or other source, or a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the Commonwealth or any political subdivision thereof (other than the authority) and neither the city or the county, nor the Commonwealth or any political subdivision thereof (other than the authority) shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

1938, p. 454; Michie Code 1942, § 3145(14); 2002, c. 548.

§ 36-30. Form and sale of bonds; presumption of validity

Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank of priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds may be sold at public or private sale at not less than par.

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and such project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this chapter.

1938, p. 454; Michie Code 1942, § 3145(15); 1972, c. 466; 1980, c. 133.

§ 36-31. Provisions of bonds, trust indentures and mortgages

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(e) To covenant (subject to the limitations contained in this chapter) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest in a trust or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a

trustee or trustees the right, in the event of a default by the authority, to take possession and use, operate and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with the trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any portion of them may enforce any covenant or right securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; and to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character.

1938, p. 455; Michie Code 1942, § 3145(16).

§ 36-32. Remedies of obligee of authority

An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding at law or in equity to compel the authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this chapter.

(b) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

1938, p. 456; Michie Code 1942, § 3145(17).

§ 36-33. Additional remedies conferrable by authority

An authority shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(b) To obtain the appointment of a receiver of any housing project of the authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and supply the same in accordance with the obligation of the authority as the court shall direct.

(c) To require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

1938, p. 456; Michie Code 1942, § 3145(18).

§ 36-34. Housing bonds to be legal investments, legal security and negotiable

The Commonwealth and all public officers, municipal corporations, political subdivisions (other than housing authorities), and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, except domestic life insurance companies may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Housing Authorities Law, or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this Commonwealth; it being the purpose of this act to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension funds, and funds held on deposit, for the purchase of any such bonds or other obligations and that any such bonds or other obligations shall be authorized security for all public deposits and shall be fully negotiable in this Commonwealth; provided, however, that nothing contained in this section with regard to legal investments shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

1942, p. 404; Michie Code 1942, § 3145(25).

§ 36-35. Contracts and covenants with federal government, etc.; agreements to sell

In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority and the federal government with respect to any housing project undertaken by the housing authority, any such housing authority is authorized to make such covenants (including covenants with holders of obligations of the authority issued for purposes of the project involved) and to confer upon the federal government such rights and remedies, as the housing authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken. In any such contract, the housing authority may, notwithstanding any other provisions of law, agree to sell and convey the project (including all lands appertaining thereto) to which such contract relates to the federal government upon the occurrence of such conditions, or upon such defaults on obligations for which any of the annual contributions provided in such contract are pledged, as may be prescribed in such contract, and at a price (which may include the assumption by the federal government of the payment, when due, of the principal of and interest on outstanding obligations of the housing authority issued for

purposes of the project involved) determined as prescribed therein and upon such other terms and conditions as are therein provided. Any such housing authority is hereby authorized to enter into such supplementary contracts, and to execute such conveyances, as may be necessary to carry out the provisions hereof. Notwithstanding any other provisions of law, any contracts or supplementary contracts or conveyances made or executed pursuant to the provisions of this section shall not be or constitute a mortgage within the meaning or for the purposes of any of the laws of this Commonwealth.

1942, p. 326; Michie Code 1942, § 3145(4o).

Article 5 - RURAL HOUSING PROJECTS

§ 36-36. Powers of county and regional housing authorities

County housing authorities and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, any such housing authority may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this Housing Authorities Law. Such leases, agreements or conveyances may include such covenants as such housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where such housing authority deems it necessary and the parties to such instruments so stipulate. Nothing contained in this section shall be construed as limiting any other powers conferred by this Housing Authorities Law.

1942, p. 322; Michie Code 1942, § 3145(4h).

§ 36-37. Same subject; tenant selection limitations; homestead exemption

A regional or county housing authority shall have power to rent, sell, or make loans to finance the cost of dwellings on farms or in other areas outside of cities and to make or accept such conveyances or leases as it deems necessary to carry out the rural housing purposes of this chapter. With respect to such housing, county and regional housing authorities shall not be subject to the tenant selection limitations provided in clause (c) of § 36-22.

When an authority provides a dwelling on a farm hereunder, the owner of the farm living in the dwelling under a lease or purchase agreement shall be entitled to receive the same homestead exemption as if he had title to the dwelling.

1946, p. 277; Michie Suppl. 1946, § 3145(4p).

§ 36-38. Housing applications by farmers

The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a county housing authority or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by

such farmers of low income. Such applications shall be received and examined by such housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income.

1942, p. 323; Michie Code 1942, § 3145(4i).

§ 36-39. Repealed

Repealed by Acts 2006, c. 784, cl. 2.

Article 6 - REGIONAL AND CONSOLIDATED HOUSING AUTHORITIES

§ 36-40. Creation of regional housing authority

If the board of supervisors of each of two or more contiguous counties by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, a political subdivision of the Commonwealth to be known as a regional housing authority shall thereupon exist for all of such counties and exercise its public and corporate powers and other functions in such counties; and thereupon each housing authority created for each of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided that the board of supervisors of a county shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any obligations outstanding unless first, all obligees of such county housing authority and parties to the contracts, bonds, notes, and other obligations of such county housing authority consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes, or other obligations; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided; and provided further that when the above two conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of supervisors of each of two or more contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, if such board of supervisors finds (and only if it finds) (a) that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) that a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county to carry out the purposes of this Housing Authorities Law in such county.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the board of supervisors of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially the foregoing terms (no further detail being necessary) that the conditions enumerated above in (a) and (b) exist. A copy of such resolution of the board of supervisors of a county, duly certified by the clerk of such county, shall be admissible in evidence in any suit, action, or proceeding.

The area of operation of a regional housing authority shall include (except as otherwise provided elsewhere in this chapter) all of the counties for which such regional housing authority is created and established.

1942, p. 317; Michie Code 1942, § 3145(4a).

§ 36-41. Increasing area of operation of regional housing authority

The area of operation of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within a regional housing authority if the board of supervisors of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the board of supervisors of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, the county housing authority created for each such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any obligations outstanding unless first, all obligees of any such county housing authority and parties to the contracts, bonds, notes, and other obligations of any such county housing authority consent in writing to the substitution

of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes, or other obligations; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided; and provided further that when the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, agreements, obligations, and property of such county housing authority shall be in the name of and vest in such regional housing authority, all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of supervisors of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the board of supervisors of each such additional county or counties shall by resolution declare that there is need for the inclusion of such county or counties in the area of operation of the regional housing authority, if (a) the board of supervisors of each such additional county or counties finds that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) the board of supervisors of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the board of supervisors of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this Housing Authorities Law if the area of operation of the regional housing authority is increased to include such additional county or counties.

1942, p. 318; Michie Code 1942, § 3145(4b).

§ 36-42. Decreasing area of operation of regional housing authority

The area of operation of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the board of supervisors of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area; provided that no action may be taken pursuant to this section if the regional housing authority has outstanding any

bonds, notes or other evidences of indebtedness, unless first, all holders of such evidences of indebtedness consent in writing to such action; and provided further that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created by and authorized to transact business and exercise its powers pursuant to § 36-4, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county.

The board of supervisors of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area if: (a) each such board of supervisors of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that (because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded) the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this Housing Authorities Law if such county or counties were excluded from such area, and (b) the board of supervisors of each such county or counties to be excluded and the commissioners of the regional housing authority each also find that (because of the aforesaid changed facts) the purposes of this Housing Authorities Law could be carried out more efficiently or economically in such county or counties if the area of operation of the regional housing authority did not include such county or counties.

Any property held by a regional housing authority within a county or counties excluded from the area of operation of such authority, as herein provided, shall (as soon as practicable after the exclusion of the county or counties respectively) be disposed of by such authority in the public interest.

1942, p. 319; Michie Code 1942, § 3145(4c).

§ 36-43. Housing authority for county excluded from regional authority

At any time after a county or counties is excluded from the area of operation of a regional housing authority as provided above, the board of supervisors of any such county may adopt a resolution declaring that there is a need for a housing authority in the county, if the board shall find such need according to the provisions of § 36-4. Thereupon a political subdivision of the Commonwealth to be known as the housing authority of the county shall exist for such county and may transact business and exercise its powers in the same manner as though created by § 36-4. Nothing contained herein shall be construed as preventing such county from thereafter being included within the area of operation of a regional housing authority as provided in § 36-40 or 36-41.

1942, p. 320; Michie Code 1942, § 3145(4d).

§ 36-44. Public hearing to create regional authority or change its area of operation, and findings

The board of supervisors of a county shall not adopt any resolution authorized by §§ 36-40, 36-41 or 36-42 unless a public hearing has first been held. The clerk of such county shall give notice of the time, place, and purpose of the public hearing at least ten days prior to the day on which the hearing is to be held, in a newspaper published in such county, or if there is no newspaper published in such county, then in a newspaper published in the Commonwealth and having a general circulation in such county. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such county and to all other interested persons.

In determining whether dwelling accommodations are unsafe or insanitary the board of supervisors of a county shall take into consideration the safety and sanitation of dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms and the extent to which conditions exist in such dwellings which endanger life or property by fire or other causes.

In connection with the issuance of bonds or the incurring of other obligations, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase or decrease of its area of operation.

1942, p. 320; Michie Code 1942, § 3145(4e).

§ 36-45. Commissioners of regional housing authority

The board of supervisors of each county included in a regional housing authority shall appoint one person as a commissioner of such authority, and each such commissioner to be first appointed by the board of supervisors of a county may be appointed at or after the time of the adoption of the resolution declaring the need for such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided above, the board of supervisors of each such county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The board of supervisors of each county shall appoint the successor of the commissioner appointed by it. A certificate of the appointment of any such commissioner shall be filed with the clerk of the county, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the board of supervisors of such county shall be thereupon abolished.

If a regional housing authority consists of only two counties, the boards of supervisors may agree to appoint two members each as commissioners of such authority. However, if the regional housing authority is changed to consist of three or more counties, the counties shall thereafter appoint one member each as a commissioner.

If the area of operation of a regional housing authority consists at any time of an even number of counties, the commissioners of the regional housing authority appointed by the boards of

supervisors of such counties shall appoint one additional commissioner whose term of office shall be as herein provided for a commissioner of a regional housing authority except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties. The commissioners of such authority appointed by the boards of supervisors of such counties shall likewise appoint each person to succeed such additional commissioner; provided that the term of office of such person begins during the terms of office of the commissioners appointing him. A certificate of the appointment of any such additional commissioner of such regional housing authority shall be filed with the other records of the regional housing authority and shall be conclusive evidence of the due and proper appointment of such additional commissioner.

When a regional housing authority is required by federal housing law to appoint a commissioner satisfying the criteria specified in Section 2 (b) of the United States Housing Act of 1937, as amended, and the rules and regulations promulgated thereunder, at least one but not more than two such commissioners shall be appointed by the commissioners of the regional housing authority. The executive director of the regional housing authority shall prepare a slate of eligible candidates for appointment for the commissioners' consideration. However, the appointing commissioners shall not be required to make appointments from such slate. The term of such appointed commissioner shall be as herein provided for a commissioner of a regional housing authority. A certificate of the appointment of any such commissioner of a regional housing authority shall be filed with the other records of the regional housing authority and shall be conclusive evidence of the due and proper appointment of such commissioner.

The commissioners of a regional housing authority shall be appointed for terms of four years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided herein.

The commissioners shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes.

For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the board of supervisors appointing him, or in the case of the commissioner appointed by the commissioners of the regional housing authority, by such commissioners; provided that such commissioner shall be removed only after he shall have been given a copy of the charges against him at least 10 days prior to the hearing thereon and had an

opportunity to be heard in person or by counsel. In the event of the removal of a commissioner by the board of supervisors appointing him, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk of the county; and in the case of the removal of the commissioner appointed by the commissioners of the regional housing authority, such record shall be filed with the other records of the regional housing authority.

1942, p. 321; Michie Code 1942, § 3145(4f); 2003, cc. 417, 535, 559, 809.

§ 36-46. Powers of regional housing authority

Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities, and all the provisions of law applicable to housing authorities created for cities or counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof; provided, that for such purposes, the term "mayor" or "governing body" as used in this Housing Authorities Law shall be construed as meaning "board of supervisors," unless a different meaning clearly appears from the context; and provided further that a regional housing authority, with respect to housing projects for farmers of low income, shall not be subject to the limitations provided in clause (c) of § 36-22. A regional housing authority shall have power to select any appropriate corporate name.

1942, p. 322; Michie Code 1942, § 3145(4g).

§ 36-47. Consolidated housing authority

If the governing body of each of two or more municipalities (whether or not contiguous) by resolution declares that there is a need for one housing authority to be created for all of the municipalities to exercise in the municipalities the powers and other functions prescribed for a consolidated housing authority, a political subdivision of the Commonwealth to be known as a consolidated housing authority (with a corporate name it selects) shall thereupon exist for all of the municipalities and exercise its public and corporate powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein. Thereupon, any housing authority created for each of the municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority. The creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of this chapter as are applicable to the creation of a regional housing authority. The provisions of this chapter applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof. The area of operation of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of the authority, except that the area of operation may be changed to include or exclude any municipality or municipalities in the same manner and under the same provisions as provided in this

chapter for changing the area of operation of a regional housing authority by including or excluding a county or counties. For all such purposes, the term "board of supervisors" shall be construed as meaning "governing body." The term "county" shall be construed as meaning "municipality" and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of a municipality for which a housing authority has not been created shall not adopt the above resolution unless it first declares that there is a need for a consolidated housing authority to function in the municipality, which declaration shall be made in the same manner and subject to the same conditions as the declaration of the governing body of a city required by § 36-4 for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of the consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities.

The term "municipality" as used in this chapter shall mean any county, city or town in the Commonwealth.

The term "residential buildings" as used in this chapter shall include, but not be limited to, any multi-family residential property in which no less than twenty percent of the units will be occupied by persons of low income and the remainder therein by persons of moderate income, both as determined by the housing authority using the criteria set forth in the definition of "persons and families of low and moderate income" in § 36-55.26, and any nursing care facility, or any nursing home as defined in § 32.1-123.

1942, p. 323; Michie Code 1942, § 3145(4k); 1958, c. 82; 1982, c. 330; 1983, c. 347; 1984, c. 350; 1987, c. 433; 1988, c. 217.

§ 36-47.1. Compensation of commissioners

The commissioners of any housing authority created for or operating in two or more cities may, in addition to being reimbursed for their expenses as otherwise provided, be paid salaries not to exceed $150 per month for each such commissioner.

1956, c. 327; 1962, c. 64; 1974, c. 610.

§ 36-47.2. Consolidation of two or more housing authorities within same city

If the governing body of any city having two or more separate housing authorities created pursuant to this title shall, by resolution, declare it necessary and in the public interest to

consolidate such authorities, or abolish the same and create a single or consolidated housing authority, then such new housing authority shall thereupon be created (with such corporate name as may be selected), and it shall exercise its public and corporate powers, and such other functions within such city pursuant to the provisions of this chapter, including the power to undertake projects applicable to housing authorities created for cities or counties. The governing body of any such city shall have the authority to terminate any one or more of such authorities and continue any other single authority, as a consolidated authority in which case any terminated authority shall cease to exist except for the purpose of winding up its affairs and executing the necessary documents for the transfer of its respective assets and liabilities, if any, to the new consolidated or surviving authority. If a new or consolidated authority is created, its membership shall be composed of seven commissioners, five of whom shall be the commissioners presently serving under existing law under any authority created within such city, and two of whom shall be commissioners selected from the other authority or the authority that is terminated. Each such commissioner shall continue to serve for the term for which he was appointed or until his successor has been appointed and has qualified.

1972, c. 124.

Article 7 - REDEVELOPMENT PROJECTS

§ 36-48. Creation of Redevelopment Areas

A redevelopment area as defined in § 36-3 may be created by an authority as provided in this chapter and a redevelopment plan may be adopted to address conditions in such redevelopment area. The redevelopment plan shall (i) outline specific boundaries for the redevelopment area and designate for acquisition such properties as are necessary or appropriate for the clearance, replanning, rehabilitation, and reconstruction of the redevelopment area, (ii) be adopted in accordance with § 36-49, and (iii) satisfy the requirements as set forth in § 36-51.

1946, p. 278; Michie Suppl. 1946, § 3145(8a); 1975, c. 455; 1988, cc. 572, 591; 2006, c. 784.

§ 36-48.1. Creation of Conservation Areas

A conservation area as defined in § 36-3 may be created by an authority as provided in this chapter and a conservation plan may be adopted to provide for the conservation, rehabilitation, and revitalization of such conservation area. The conservation plan shall (i) outline specific boundaries for the conservation area, (ii) be adopted in accordance with § 36-49.1, and (iii) satisfy the requirements as set forth in § 36-51.1.

1964, c. 378; 1978, c. 360; 2006, c. 784.

§ 36-49. Adoption of Redevelopment Plans

A. An authority may adopt a redevelopment plan for a designated redevelopment area to address blighted areas and in particular is specifically empowered to carry out any work or undertaking in the redevelopment area, including any or all of the following:

1. Acquire blighted areas, which are hereby defined in § 36-3;

2. Acquire other real property for the purpose of removing, preventing, or reducing blight;

3. Acquire real property where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions prevent a proper development of the property and where the acquisition of the area by the authority is necessary to carry out a redevelopment plan;

4. Permit the preservation, repair, or restoration of buildings of historic interest; and to clear any areas acquired and install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

5. Provide for the conservation of portions of the project area and the rehabilitation to project standards as stated in the redevelopment plan of buildings within the project area, where such rehabilitation is deemed by the authority to be feasible and consistent with project objectives;

6. Make land so acquired available to nongovernmental persons or entities or public agencies (including sale, leasing, or retention by the authority itself) in accordance with the redevelopment plan;

7. Assist the reconstruction of project areas by making loans or grants of funds received from any public or private source, for the purpose of facilitating the construction, reconstruction, rehabilitation or sale of housing or other improvements constructed or to be constructed on land situated within the boundaries of a redevelopment project;

8. Acquire, construct or rehabilitate residential housing developments for occupancy by persons of low, moderate and middle income to be owned, operated, managed, leased, conveyed, mortgaged, encumbered or assigned by an authority. Income limits for such persons shall be determined for each redevelopment project by an authority by resolution adopted by a majority of its appointed commissioners, shall be adjusted for household size and may be revised as an authority deems appropriate. In connection with a residential housing development, an authority shall have all rights, powers and privileges granted by subdivision 4 of § 36-19;

9. Accomplish any combination of the foregoing to carry out a redevelopment plan; and

10. Exercise such other powers as are authorized by law.

B. No redevelopment plan shall be effective until notice has been sent to the property owner or owners of record in accordance with subsection B of § 36-27 and the redevelopment plan has been approved by the local governing body.

1946, p. 278; Michie Suppl. 1946, § 3145(8b); 1962, c. 336; 1972, cc. 466, 782; 1980, c. 133; 1988, cc. 572, 591; 2006, c. 784.

§ 36-49.1. Adoption of Conservation Plans

A. An authority may adopt a conservation plan for a designated conservation area to address blight and blighting conditions, to conserve such area, prevent further deterioration and prevent

such area from becoming blighted, and in particular is specifically empowered to carry out any work or undertaking in the conservation area, including any or all of the following:

1. Acquire property within such areas which is blighted, designated for public use in the conservation plan, or the use or condition of which is inconsistent with the purposes of the conservation plan or the provisions of the zoning ordinance or code of the locality;

2. Rehabilitate or clear property so acquired;

3. Provide for the installation, construction or reconstruction of streets, utilities, parks, parking facilities, playgrounds, public buildings and other site improvements essential to the conservation or rehabilitation planned;

4. Make land or improvements so acquired available to nongovernmental persons or entities or public agencies (by sale, lease or retention of ownership by the authority itself);

5. Assist the reconstruction of project areas by making loans or grants of funds received from any public or private source, for the purpose of facilitating the construction, reconstruction, rehabilitation or sale of housing or other improvements constructed or to be constructed on land situated within the boundaries of a conservation project;

6. Encourage and assist property owners or occupants within the conservation area to improve their respective holdings, by suggesting improved standards for design, construction, maintenance and use of such properties and offering encouragement or assistance in other ways including the power to lend money and make grants to owners or occupants, directed toward prevention and elimination of blight;

7. Acquire, construct or rehabilitate residential housing developments for occupancy by persons of low, moderate and middle income to be owned, operated, managed, leased, conveyed, mortgaged, encumbered or assigned by an authority. Income limits for such persons shall be determined for each conservation project by an authority by resolution adopted by a majority of its appointed commissioners, shall be adjusted for household size and may be revised as an authority deems appropriate. In connection with a residential housing development, an authority shall have all rights, power and privileges granted by subdivision 4 of § 36-19; and

8. Exercise such other powers as are authorized by law.

B. No conservation plan shall be effective until notice has been sent to the property owner or owners of record in accordance with subsection B of § 36-27 and the conservation plan has been approved by the local governing body.

1964, c. 378; 1966, cc. 81, 418; 1968, c. 312; 1970, cc. 222, 491, 555, 596; 1972, c. 174; 1973, c. 29; 1974, c. 137; 1975, c. 532; 1976, c. 510; 1980, c. 133; 1988, cc. 572, 591; 2006, c. 784.

§ 36-49.1:1. Spot blight abatement authorized; procedure

A. Notwithstanding any other provision of this chapter, an authority, or any locality, shall have the power to acquire or repair any blighted property, as defined in § 36-3, whether inside or outside of a conservation or redevelopment area, by purchase or through the exercise of the power of eminent domain provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, and, further, shall have the power to hold, clear, repair, manage or dispose of such property for purposes consistent with this chapter. In addition, the authority and locality shall have the power to recover the costs of any repair or disposal of such property from the owner or owners of record, determined in accordance with subsection B of § 36-27. This power shall be exercised only in accordance with the procedures set forth in this section.

B. The chief executive or designee of the locality or authority shall make a preliminary determination that a property is blighted in accordance with this chapter. It shall send notice to the owner or owners of record determined in accordance with subsection B of § 36-27, specifying the reasons why the property is blighted. The owner or owners of record shall have 30 days from the date the notice is sent in which to respond in writing with a spot blight abatement plan to address the blight within a reasonable time.

C. If the owner or owners of record fail to respond within the 30-day period with a written spot blight abatement plan that is acceptable to the chief executive of the agency, authority or locality, the agency, authority or locality may request the locality to declare the property as blighted, which declaration shall be by ordinance adopted by the governing body.

D. No spot blight abatement plan shall be effective until notice has been sent to the property owner or owners of record and an ordinance has been adopted by the local governing body. Written notice to the property owner shall be sent by regular mail to the last address listed for the owner on the locality's assessment records for the property, together with a copy of such spot blight abatement plan prepared by the agency, authority, or locality. If the repair or other disposition of the property is approved, the authority, agency, or locality may carry out the approved plan to repair or acquire and dispose of the property in accordance with the approved plan, the provisions of this section, and the applicable law.

E. If the ordinance is adopted by the governing body of the locality, the locality shall have a lien on all property so repaired or acquired under an approved spot blight abatement plan to recover the cost of (i) improvements made by such locality to bring the blighted property into compliance with applicable building codes and (ii) disposal, if any. The lien on such property shall bear interest at the legal rate of interest established in § 6.2-301, beginning on the date the repairs are completed through the date on which the lien is paid. The lien authorized by this subsection may be recorded as a lien among the land records of the circuit court, which lien shall be treated in all respects as a tax lien and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. The governing body may recover its costs of repair from the owner or owners of record of the property when the repairs were made at such time as the property is sold or disposed of by such owner or owners. If the property is

acquired by the governing body through eminent domain, the cost of repair may be recovered when the governing body sells or disposes of the property. In either case, the costs of repair shall be recovered from the proceeds of any such sale.

F. Notwithstanding the other provisions of this section, unless otherwise provided for in Title 36, if the blighted property is occupied for personal residential purposes, the governing body, in approving the spot blight abatement plan, shall not acquire by eminent domain such property if it would result in a displacement of the person or persons living in the premises. The provisions of this subsection shall not apply to acquisitions, under an approved spot blight abatement plan, by any locality of property which has been condemned for human habitation for more than one year. In addition, such locality exercising the powers of eminent domain in accordance with Title 25.1, may provide for temporary relocation of any person living in the blighted property provided the relocation is within the financial means of such person.

G. In lieu of the acquisition of blighted property by the exercise of eminent domain, and in lieu of the exercise of other powers granted in subsections A through H, any locality may, by ordinance, declare any blighted property as defined in § 36-3 to constitute a nuisance, and thereupon abate the nuisance pursuant to § 15.2-900 or § 15.2-1115. Such ordinance shall be adopted only after written notice by certified mail to the owner or owners at the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records. If the owner does not abate or remove the nuisance and the locality abates or removes the nuisance at its expense, the costs of the removal or abatement of the nuisance shall be a lien on the property and such lien shall bear interest at the legal rate of interest established in § 6.2-301, beginning on the date the removal or abatement is completed through the date on which the lien is paid.

H. The provisions of this section shall be cumulative and shall be in addition to any remedies for spot blight abatement that may be authorized by law.

1994, 2nd Sp. Sess., cc. 5, 10; 1995, cc. 702, 827; 1996, c. 847; 1997, c. 572; 1998, cc. 690, 898; 1999, cc. 39, 410, 418; 2001, c. 482; 2003, c. 940; 2006, c. 784; 2007, c. 763; 2009, cc. 181, 551.

§ 36-49.2. Power to purchase or lease land for certain other redevelopment projects

In addition to the other powers to acquire real property by purchase or lease, an authority is specifically empowered to purchase or lease real property for immediate or future use, without the exercise of the power of eminent domain, for improvement and development for sale, lease, or sublease as industrial sites, scientific research laboratory sites, educational institution sites or sites for housing persons displaced from other lands of the authority.

1964, Ex. Sess., c. 16.

§ 36-50. Extension of general powers for actions taken pursuant to a redevelopment plan

In undertaking actions pursuant to a redevelopment plan, an authority shall have all the rights, powers, privileges, and immunities provided in this chapter. However, nothing contained in §§

36-21 and 36-22 shall be construed as limiting the power of an authority, in the event of a default (including failure of compliance with a redevelopment plan) by a purchaser or lessee of land in a redevelopment plan, to acquire property and operate it free from the restrictions contained in §§ 36-21 and 36-22; and provided further, that any property which an authority leases to nongovernmental persons or entities for redevelopment under a redevelopment plan shall have the same tax status as if such leased property were owned by such nongovernmental persons or entities.

1946, p. 279; Michie Suppl. 1946, § 3145(8c); 2006, c. 784.

§ 36-50.1. Extension of general powers for actions taken pursuant to a conservation plan

In implementing a conservation plan, an authority shall have all the rights, powers, privileges, and immunities provided in this chapter. However, the power of eminent domain shall not be exercised in connection with a conservation project except to acquire (i) properties designated for use by the public or a public agency in the conservation plan, (ii) properties which are determined by the authority to be in violation of the standards for design, construction, maintenance and use of property set out in the conservation plan for the project in which such property is situate, and which have not been made to comply with such standards within one year after a written request to rehabilitate to project standards is given to the owner by the authority, (iii) properties as to which voluntary conveyance cannot be effected in the course of the execution of the conservation plan because of the inability of the owners to convey marketable title, or (iv) properties which are infeasible of rehabilitation, blighted properties or properties which inhibit or prevent accomplishment of the purposes of the conservation plan.

1964, c. 378; 1972, c. 733; 2006, c. 784.

§ 36-51. Redevelopment plans

A. An authority shall not implement any redevelopment plan under this law until the governing body of the locality has approved the redevelopment plan, which provides an outline for the development or redevelopment of the redevelopment area and is sufficiently complete to indicate (i) its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements; (ii) proposed land uses and building requirements in the redevelopment area; (iii) the land in the redevelopment area that the authority does not intend to acquire; (iv) the land in the redevelopment area that will be made available after acquisition to nongovernmental persons or entities for redevelopment and that land which will be made available after acquisition to public enterprise for redevelopment; (v) anticipated funding sources that may be sufficient to acquire all property designated for acquisition within five years of the locality's approval; and (vi) the method for the temporary relocation of persons living in the redevelopment areas; and also the method for providing (unless already available) decent, safe and sanitary dwellings in the locality substantially equal in number to the number of substandard dwellings to be cleared from the redevelopment area, at rents within the financial reach of the income groups displaced from such

substandard dwellings. Any locality is hereby authorized to approve redevelopment plans through their governing body or agency designated for that purpose.

B. No sooner than thirty months or later than thirty-six months following the date of the locality's approval of the redevelopment plan (hereinafter called the "approval date"), the locality shall review and determine by resolution whether to reaffirm the redevelopment plan. Where the locality fails to reaffirm the redevelopment plan, any real property within the redevelopment area that has not been acquired by the authority, or for which a petition in condemnation has not been filed by the authority, prior to the date of adoption of such resolution by the locality (hereinafter called the "termination date") shall no longer be eligible for acquisition by the authority unless the authority and the property owner mutually agree to the acquisition, in which case the authority shall be specifically empowered to acquire the property. For purposes of this section, a mediation request submitted by either the authority or the property owner, in accordance with § 36-27, prior to the termination date shall preserve the authority's right to file a petition in condemnation relating to such real property for a period of six months after the termination date.

C. Where the locality reaffirms the redevelopment plan, the authority shall continue to be authorized to acquire real property within the redevelopment area by purchase, or through the institution of eminent domain proceedings in accordance with § 36-27, until the fifth anniversary of the approval date. Any real property within the redevelopment area that has not been acquired by the authority, or for which a petition in condemnation has not been filed by the authority, prior to the fifth anniversary of the approval date, shall no longer be eligible for acquisition by the authority unless the authority and the property owner mutually agree to the acquisition, in which case the authority shall be specifically empowered to acquire the property. For purposes of this section, a mediation request submitted by either the authority or the property owner, in accordance with § 36-27, prior to the fifth anniversary of the approval date, shall preserve the authority's right to file a petition in condemnation relating to the real property for a period of six months after the fifth anniversary of the approval date.

D. Notwithstanding the provisions of this section, a locality shall not be precluded from adopting a new redevelopment plan, in accordance with this section, which designates a redevelopment area that includes real property that was previously included within a redevelopment area under a previously adopted redevelopment plan.

E. If the authority decides against acquiring real property designated for acquisition under an approved redevelopment plan after having made a written purchase offer to the owner of the property, it shall, upon the written request of the property owner given no later than one year after the date of written notice from the authority to the property owner of its decision not to acquire his property, reimburse the owner of the property his reasonable expenses incurred in connection with the proposed acquisition of his property. Reasonable expenses shall include, but are not limited to, reasonable fees of attorneys and appraisers or other experts necessary to establish the value of the property to be appraised.

1946, p. 279; Michie Suppl. 1946, § 3145(8d); 2001, c. 729; 2006, c. 784.

§ 36-51.1. Requirements for "conservation plan" generally

An authority shall not implement any conservation plan under this law until the governing body of the locality has approved a conservation plan, which provides an outline for the conservation, development or redevelopment of the conservation area, affording maximum opportunity for conservation, rehabilitation or redevelopment by nongovernmental persons or entities consistent with the ends to be achieved, and is sufficiently complete to indicate (i) its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements; (ii) any conditions and limitations on acquisition of property; (iii) proposed land uses for the properties to be acquired; (iv) any conditions and limitations, including time limitation, under which property shall be made available for rehabilitation or redevelopment by public enterprise or nongovernmental persons or entities (by sale, lease or retention by the authority itself); (v) standards of design, construction, maintenance, and use of property and other measures to be taken or recommended toward elimination and prevention of blight and deterioration; (vi) the method for the temporary relocation of any persons living in the conservation area who will be displaced in accordance with the plan, as well as the method of providing (unless already available) decent, safe and sanitary dwellings in such city or county substantially equal in number to the number of substandard dwellings to be cleared from the conservation area, at rents within the financial reach of the income groups displaced from such substandard dwellings; (vii) any limitation on the length of time within which project activities can be undertaken; (viii) a procedure for administrative review of the determination at staff level and prior to a final determination by the authority under § 36-50.1 that an individual property is in violation of project standards and, therefore, subject to condemnation; and (ix) the procedure by which such conservation plan may be amended.

1964, c. 378; 1966, c. 81; 2006, c. 784.

§ 36-52. Cooperation by localities

Any local government shall have the same rights and powers to cooperate with and assist authorities with respect to implementation of conservation or redevelopment plans that such locality has pursuant to §§ 36-6 and 36-7 and any other provision of the Housing Authorities Law.

1946, p. 280; Michie Suppl. 1946, § 3145(8e); 2006, c. 784.

§ 36-52.1. Authority for localities to create conservation or redevelopment areas

A locality has no authority to create conservation or redevelopment areas, except through a redevelopment and housing authority and only in accordance with this chapter.

1964, c. 378; 1966, c. 81; 2006, c. 784.

§ 36-52.2. Acquisition of property prior to adoption of development or conservation plan in certain cities

Whenever the governing body of any city of more than 300,000 population has approved an area for survey and planning preliminary to the adoption of a redevelopment or conservation plan, and the area includes property within such county, city or town duly designated by said governing body for educational, medical center or municipal uses, an authority may acquire such property by deed or by eminent domain.

1968, c. 710.

§ 36-52.3. Adoption and designation of "rehabilitation area."

A. Whenever it appears to the governing body of any locality that a portion of such locality adjacent to an area embraced in a "conservation plan," approved by such body pursuant to § 36-49.1, is in the early stages of deterioration and determines that if not rehabilitated such area is likely to continue to deteriorate and become eligible for designation as a conservation area, such governing body may create a rehabilitation area.

B. No rehabilitation area shall be effective until notice has been sent to the property owner or owners of record in such area in accordance with subsection B of § 36-27 and an ordinance approving such rehabilitation area has been adopted by the local governing body. The ordinance shall outline specific boundaries for the rehabilitation area, establish that the rehabilitation area is adjacent to a conservation area and include such properties as are in need of rehabilitation in such area.

C. An authority is specifically empowered to encourage and assist property owners or occupants within the rehabilitation area so designated to improve their respective holdings, by suggesting improved standards for design, construction, maintenance, renovation and use of such properties and offering encouragement or assistance in other ways including the power to lend money and make grants to said owners or occupants, directed toward prevention and elimination of deteriorating conditions within such area.

D. In executing the powers provided in subsection C, an authority shall have all of the rights, powers and immunities granted in connection with conservation or redevelopment plans pursuant to this chapter except the power to acquire property through the exercise of the power of eminent domain.

1978, c. 360; 2006, c. 784.

§ 36-53. Making property available for conservation or redevelopment

An authority may make land in a conservation or redevelopment area available for purchase or use by nongovernmental persons or entities or public agencies in accordance with the conservation or redevelopment plan. Such land may be made available at its fair value, which represents the value at which the authority determines such land should be made available in order that it may be developed, conserved or redeveloped for the purposes specified in such plan.

To assure that land acquired in a conservation or redevelopment area is used in accordance with the conservation or redevelopment plan, an authority, upon the sale or lease of such land, shall

obligate purchasers or lessees: (1) to use the land for the purpose designated in the conservation or redevelopment plan; (2) to begin the building of their improvements within a period of time which the authority fixes as reasonable; and (3) to comply with such other conditions as are necessary to carry out the purposes of this chapter. Any such obligations by the purchaser shall be covenants and conditions running with the land where the authority so stipulates.

1946, p. 280; Michie Suppl. 1946, § 3145(8f); 1970, c. 222; 2006, c. 784.

§ 36-54. Aid from federal government

An authority may borrow money or accept contributions from the federal government to assist in its undertaking redevelopment projects. An authority may do any and all things necessary or desirable to secure such financial aid (including obligating itself in any contract with the federal government for annual contributions to convey to the federal government the project to which the contract relates upon the occurrence of a substantial default thereunder), in the same manner as it may do to secure such aid in connection with slum clearance and housing projects.

1946, p. 280; Michie Suppl. 1946, § 3145(8g).

§ 36-55. Bonds to be legal investments and security

Bonds or other obligations issued by an authority in connection with projects authorized under this chapter shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations and other bodies and officers as bonds or other obligations issued by an authority in connection with the development of slum clearance or housing projects.

1946, p. 280; Michie Suppl. 1946, § 3145(8h); 1964, c. 378.

Article 7.1 - REDEVELOPMENT AND URBAN RENEWAL AUTHORITIES

. In certain counties

§ 36-55.1. through 36-55.6. These sections as set forth in Chapter 501 of the Acts of 1960, as amended by Chapter 303 of the Acts of 1973 and Chapter 95 of the Acts of 1975, relating to redevelopment and urban renewal authorities in counties having a density of population in excess of 4,000 per square mile, are incorporated in this Code by this reference.

Chapter 1.1 - OFFICE AND STATE BOARD OF HOUSING [Repealed]

§§ 36-55.7 through 36-55.23. Repealed

Repealed by Acts 1974, c. 668.

Chapter 1.2 - VIRGINIA HOUSING DEVELOPMENT AUTHORITY ACT

§ 36-55.24. Short title

This chapter shall be known and may be cited as the "Virginia Housing Development Authority Act."

1972, c. 830.

§ 36-55.25. Finding and declaration of necessity

It is hereby declared: (i) that there exists within the Commonwealth a serious shortage of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare and prosperity of the residents of the Commonwealth; (ii) that it is imperative that the supply of residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased; (iii) that private enterprise and investment have been unable, without assistance, to produce the needed construction or rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families; (iv) that a concentration of persons and families of low and moderate income even in standard structures does not eliminate undesirable social conditions; (v) that the governing body of a city or county may in its discretion determine that it is necessary to the preservation of the financial viability of such city or county and the health, welfare and prosperity of its residents that the population of such city or county be maintained as economically mixed by providing housing for persons and families of other than low and moderate income in order to broaden the tax bases of such areas; (vi) that in providing sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford it may at times be necessary or desirable to provide housing for persons and families of other than low and moderate income; (vii) that it is critical to the success, prosperity and viability of areas being revitalized that financing be made available for nonhousing buildings that are incidental to residential housing for low and moderate income persons and families and other persons and families in order to provide products and services to those living in residential housing or that are necessary or appropriate for the revitalization of such areas or for the industrial, commercial or other economic development of such areas; (viii) that the financing of residential housing for low and moderate income persons and families and other persons and families may be appropriate to promote the industrial, commercial or other economic development of certain areas in a city or the county by inducing manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ix) that private enterprise and investment be encouraged both to sponsor land development and build and rehabilitate residential housing for such persons and families of low and moderate income and to build housing which will prevent the recurrence of slum conditions by housing persons of varied economic means in the same projects or area, and that private financing be supplemented by financing as provided in this chapter in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout Virginia.

It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which such persons or families can afford and to

stabilize or recover an appropriate economic mix in certain areas of the Commonwealth the legislature finds that it is necessary to create and establish a state housing development authority for the purpose of encouraging the investment of private capital and stimulating the construction and rehabilitation of residential housing to meet the needs of such persons and families or to stabilize such areas through the use of public financing, to provide construction and mortgage loans and to make provision for the purchase of mortgage loans and otherwise.

It is hereby further declared to be necessary and in the public interest that such state housing development authority provide for predevelopment costs, temporary financing, land development expenses and residential housing construction or rehabilitation by private sponsors for sale or rental to persons and families of low and moderate income and others; further, to provide mortgage financing for the purposes of supplying sanitary and safe dwelling accommodations at rents, prices or other costs which such persons or families can afford or of stabilizing urban areas, including without limitation, long-term federally insured mortgages; further, in revitalization areas designated in or pursuant to § 36-55.30:2, to provide financing for nonhousing buildings that are incidental to residential housing financed or to be financed in such areas pursuant to this chapter for low and moderate income persons and families and for other persons and families or that are necessary or appropriate for the revitalization of such areas or the industrial, commercial or other economic development of such areas; further, to increase the construction and rehabilitation of low and moderate income housing through the purchase from mortgage lenders authorized to make loans in the Commonwealth of mortgage loans for residential housing for persons and families of low and moderate income in the Commonwealth; further, to acquire, develop and own multifamily residential housing for occupancy by persons and families of low and moderate income; further, to provide technical, consultative and project assistance services to private sponsors; further, to assist in coordinating federal, state, regional and local public and private efforts and resources; to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages; further, to promote wise usage of land and other resources in order to preserve the quality of life we value so highly in Virginia; and further, to act as the loan servicer for a housing lender.

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted, and that such activities serve a public purpose in improving or otherwise benefiting the people of the Commonwealth; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

1972, c. 830; 1975, c. 536; 1978, c. 508; 1979, c. 374; 1987, c. 254; 2004, c. 187; 2011, c. 690.

§ 36-55.26. Definitions

As used in this chapter the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

"Bonds," "notes," "bond anticipation notes," and "other obligations" mean any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness issued by HDA pursuant to this chapter.

"City" means any city or town in the Commonwealth.

"County" means any county in the Commonwealth.

"Earned surplus" shall have the same meaning as in generally accepted accounting standards.

"Economically mixed project" means residential housing or housing development, which may consist of one or more buildings located on contiguous or noncontiguous parcels that the HDA determines to finance as a single economically mixed project, to be occupied by persons and families of low and moderate income and by other persons and families as the HDA shall determine.

"Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

"Federal mortgage" means a mortgage loan for land development for residential housing or residential housing made by the United States or an instrumentality thereof or for which there is a commitment by the United States of America or an instrumentality thereof to make such a mortgage loan.

"Federally insured mortgage" means a mortgage loan for land development for residential housing or residential housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage.

"HDA" means the Virginia Housing Development Authority created and established pursuant to § 36-55.27 of this chapter.

"Housing development costs" means the sum total of all costs incurred in the development of a housing development, which are approved by the HDA as reasonable and necessary, which costs shall include, but are not necessarily limited to: fair value of land owned by the sponsor, or cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing site or payments for the purchase of such properties; cost of site preparation, demolition and development; architecture, engineering, legal, accounting, HDA, and other fees paid or payable in connection with the planning, execution and financing of the housing development; cost of necessary studies, surveys, plans and permits; insurance, interest; financing, tax and assessment costs and other operating and carrying costs during construction; cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery and apparatus related to the real property; cost of land improvements, including without limitation, landscaping and off-site improvements, whether or not such costs have been paid in cash or in a form other than cash; necessary expenses in connection with initial occupancy of the housing development; a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor; an allowance established by

HDA for working capital and contingency reserves, and reserves for any anticipated operating deficits during the first two years of occupancy; in the case of an economically mixed project within a revitalization area designated in or pursuant to § 36-55.30:2, the costs of any nonhousing buildings that are financed in conjunction with such project and that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area; the cost of such other items, including tenant relocation, if such tenant relocation costs are not otherwise being provided for, as HDA shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

"Housing development" or "housing project" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for persons and families of low or moderate income in need of housing and, in the case of an economically mixed project, other persons and families; such undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and such offices, and other nonhousing facilities incidental or related to such development or project such as administrative, community, health, nursing care, medical, educational and recreational facilities as HDA determines to be necessary, convenient, or desirable. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

"Housing lender" means any bank or trust company, mortgage banker approved by the Federal National Mortgage Association, savings bank, national banking association, savings and loan association or building and loan association, mortgage broker, mortgage company, mortgage lender, life insurance company, credit union, agency or authority of the Commonwealth or any other state, or locality authorized to finance housing loans on properties located in or outside of the Commonwealth to persons and families of any income.

"Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, corporations, cooperatives and condominiums, approved by HDA as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development whether nonprofit or organized for limited profit subject to the regulatory powers of HDA and other terms and conditions set forth in this chapter.

"Land development" means the process of acquiring land for residential housing construction, and of making, installing, or constructing nonresidential housing improvements, including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal and treatment installations, steam, gas and electric lines and installations, roads, streets, curbs, gutters,

sidewalks, storm drainage facilities, other related pollution control facilities, and other installations or works, whether on or off the site, which HDA deems necessary or desirable to prepare such land primarily for residential housing construction within the Commonwealth.

"Loan servicer" means any person who, on behalf of a housing lender, collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts due, on obligations due and owing to the housing lender pursuant to a residential mortgage loan or who, when the borrower is in default or in foreseeable likelihood of default, works on behalf of the housing lender with the borrower to modify or refinance, either temporarily or permanently, the obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

"Mortgage" means a mortgage deed, deed of trust, or other security instrument which shall constitute a lien in the Commonwealth on improvements and real property in fee simple, on a leasehold under a lease having a remaining term, which at the time such mortgage is acquired does not expire for at least that number of years beyond the maturity date of the interest-bearing obligation secured by such mortgage as is equal to the number of years remaining until the maturity date of such obligation or on personal property, contract rights or other assets.

"Mortgage lender" means any bank or trust company, mortgage banker approved by the Federal National Mortgage Association, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, the federal government or other financial institutions or government agencies which are authorized to and customarily provide service or otherwise aid in the financing of mortgages on residential housing located in the Commonwealth for persons and families of low or moderate income.

"Mortgage loan" means an interest-bearing obligation secured by a mortgage.

"Multifamily residential housing" means residential housing other than single-family residential housing, as hereinafter defined.

"Municipality" means any city, town, county or other political subdivision of the Commonwealth.

"Nonhousing building" means a building or portion thereof and any related improvements and facilities used or to be used for manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings other than residential housing.

"Persons and families of low and moderate income" means persons and families, irrespective of race, creed, national origin or sex, determined by the HDA to require such assistance as is made available by this chapter on account of insufficient personal or family income taking into consideration, without limitation, such factors as follows: (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the ability of such persons and families to compete

successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing, and (v) if appropriate, standards established for various federal programs determining eligibility based on income of such persons and families.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

"Residential housing" means a specific work or improvement within the Commonwealth, whether multifamily residential housing or single-family residential housing undertaken primarily to provide dwelling accommodations, including the acquisition, construction, rehabilitation, preservation or improvement of land, buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental, related, or appurtenant thereto. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

"Single-family residential housing" means residential housing consisting of four or fewer dwelling units, the person or family owning or intending to acquire such dwelling units, upon completion of the construction, rehabilitation or improvement thereof, also occupying or intending to occupy one of such dwelling units.

1972, c. 830; 1975, c. 536; 1987, c. 363; 1988, c. 218; 1996, c. 498; 2004, c. 187; 2011, c. 690.

§ 36-55.27. Virginia Housing Development Authority continued; constituted a public instrumentality

There is hereby continued within the Department of Housing and Community Development, for the purpose of § 36-55.51, a political subdivision of the Commonwealth of Virginia with all of the politic and corporate powers as are set forth in this chapter, which are hereby reaffirmed, to be known as the "Virginia Housing Development Authority" to carry out the provisions of this chapter. The HDA is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the HDA of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth.

1972, c. 830; 1977, c. 613; 1979, c. 243.

§ 36-55.27:1. Programs and regulations to implement the Consolidated Plan

The HDA shall be responsible for implementing, to the extent and in the manner determined by the HDA to be reasonable and proper and consistent with its legal and financing responsibilities, new and existing programs, policies, and regulations to accomplish the goals, objectives, and strategies set forth in the Consolidated Plan developed in accordance with the provisions of §§ 36-131 and 36-139.

1992, c. 754; 2002, c. 461.

§ 36-55.28. Appointment and tenure of commissioners; officers; quorum; compensation; liability

A. The powers of HDA shall be vested in the commissioners of HDA as follows: a representative of the Board of Housing and Community Development, such representative to be selected by that Board; the Director of the Department of Housing and Community Development as an ex officio voting commissioner; the Treasurer of the Commonwealth; and seven persons appointed by the Governor, subject to confirmation by the General Assembly, for terms of four years. An additional commissioner satisfying the criteria specified by Section 2 (b) of the United States Housing Act of 1937, as amended, and the rules and regulations promulgated thereunder, shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term of four years. If, however, after appointment, the additional commissioner no longer satisfies such criteria, he may be removed by the Governor effective upon the appointment and qualification of his successor, who shall serve for the remainder of the unexpired term. In appointing persons to the commission the Governor shall refrain from appointing more than three persons from any one commercial or industrial field. No commissioner appointed pursuant to this chapter by the Governor shall serve more than two consecutive full terms. Any vacancies in the membership of HDA shall be filled in like manner but only for the remainder of an unexpired term. Except as otherwise provided in this section, each commissioner shall hold office for the term of his appointment and until his successor shall have been appointed and qualified.

B. The commissioners shall elect from among their number a chairman and a vice-chairman annually and such other officers as they may determine. Meetings shall be held at the call of the chairman or whenever two commissioners so request. Five commissioners of the HDA shall constitute a quorum and any action taken by HDA under the provisions of this chapter may be authorized by resolution approved by a majority of the commissioners who are present at any regular or special meeting. No vacancy in the membership of the HDA shall impair the right of a quorum to exercise all the rights and perform all the duties of the HDA.

C. Each commissioner shall be compensated from funds of the HDA at the rate per day specified in § 2.2-2813 for each day or portion thereof in which the commissioner is engaged in the business of the HDA. In addition, each commissioner shall be reimbursed for his reasonable expenses incurred in carrying out his duties under this chapter.

D. Commissioners and employees of HDA shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for inefficiency, neglect of duty or misconduct in the manner set forth therein.

E. Notwithstanding the provisions of any other law, no officer or employee of this Commonwealth shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on HDA or his service thereto.

F. HDA may use its funds, and may obtain liability insurance or provide self-insurance, for the payment or reimbursement of costs and expenses (including, without limitation, amounts paid or to be paid in satisfaction of judgment or settlement, penalties, attorneys' fees and expenses, and court costs) incident to any liability of its commissioners and employees arising from the performance or discharge of their official duties and such other activities as the commissioners of HDA may by resolution approve for the purpose of making such payment or reimbursement or providing such insurance or self-insurance.

1972, c. 830; 1974, c. 668; 1975, c. 536; 1976, c. 117; 1977, c. 613; 1985, c. 70; 1987, Sp. Sess., c. 1; 1988, c. 226; 1992, c. 754; 1993, c. 857; 2002, c. 454; 2003, c. 434.

§ 36-55.29. Executive director

(a) The commissioners shall employ an executive director who shall also be the secretary and who shall administer, manage and direct the affairs and business of the HDA, subject to the policies, control and direction of the commissioners. The commissioners may employ technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commissioners may delegate to one or more of its agents or employees such administrative duties as it may deem proper.

(b) The secretary shall keep a record of the proceedings of the HDA and shall be custodian of all books, documents and papers filed with the HDA and of its minute book and seal. He shall have authority to cause to be made copies of all minutes and other records and documents of the HDA and to give certificates under the seal of the HDA to the effect that such copies are true copies and all persons dealing with the HDA may rely upon such certificates.

1972, c. 830.

§ 36-55.30. Powers of HDA generally

The HDA is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. Sue and be sued in its own name;

2. Have an official seal and to alter the same at pleasure;

3. Have perpetual succession;

4. Maintain an office at such place or places within the Commonwealth as it may designate;

5. Adopt and from time to time amend and repeal bylaws, not inconsistent with this chapter, to carry into effect the powers and purposes of HDA and the conduct of its business;

6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage,

operate, or improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law;

8. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities to effectuate the purposes of this chapter;

9. To enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof or any municipality in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any housing development or residential housing, or land improvement; to enter into agreements with the federal government or other parties for the provision by the HDA, or any entity or fund owned or sponsored by or related to the HDA, of services and assistance in the restructuring or modification of debt or subsidy, or in the improvement of the financial or physical condition, of any housing development or residential housing, including without limitation any housing development or residential housing owned, financed or assisted by the federal government or financed by a mortgage loan insured by the federal government, which agreements may provide for the indemnification by the HDA of the federal government or other parties against liabilities and costs in connection with the provision of such services and assistance if such indemnification is determined by the executive director to be in furtherance of the public purposes of this chapter, provided that (i) such indemnification shall be payable solely from the funds of the HDA, excluding any funds appropriated by the Commonwealth which shall be held by the HDA in a separate fund while such indemnification is in effect, (ii) such indemnification shall not constitute a debt or obligation of the Commonwealth and the Commonwealth shall not be liable therefor, and (iii) any such agreement limits the HDA's total liability for the indemnification thereunder to a stated dollar amount and notifies the federal government or other parties that the full faith and credit of the Commonwealth are not pledged or committed to payment of the HDA's obligation to indemnify the federal government or other parties under such agreement; to operate and administer loan programs of the federal government, the Commonwealth of Virginia, or any governmental agency thereof or any municipality involving land development, the planning, development, construction or rehabilitation of housing developments and residential housing, the acquisition, preservation, improvement or financing of existing residential housing or other forms of housing assistance for persons and families of low and moderate income, however funded; and to operate and administer any program of housing assistance for persons and families of low and moderate income, however funded;

10. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to such conditions, acceptable to HDA, upon which such aid, grants, contributions and cooperation may be made, including, but not limited to, rent supplement payments made on behalf of eligible persons or families or for the payment in whole or in part of the interest expense for a housing development or for any other purpose consistent with this chapter;

11. To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department, agency, or instrumentality of the United States or of the Commonwealth, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or instrumentality;

12. To provide advice and technical information, including technical assistance at the state and local levels in the use of both public and private resources to increase low-income housing resources for the disabled;

13. To employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;

14. To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;

15. To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe and to create insurance funds and form corporations for the purpose of providing mortgage guaranty insurance on mortgage loans made or financed by HDA pursuant to this chapter;

16. To invest its funds as provided in this chapter or permitted by applicable law;

17. To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided;

18. Subject to the requirements of any agreements with bondholders or noteholders, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which HDA is a party;

19. Subject to the requirements of any agreements with bondholders or noteholders, to enter into contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from any department, agency or instrumentality of the United States or

the Commonwealth, such reductions can be made without jeopardizing the economic stability of housing being financed;

20. To procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or notes or any other evidences of indebtedness thereof issued by HDA or an authority, including the power to pay premiums on any such insurance;

21. To make and enter into all contracts and agreements with mortgage lenders for the servicing and processing of mortgage loans pursuant to this chapter;

22. To establish, and revise from time to time and charge and collect fees and charges in connection with any agreements made by HDA under this chapter;

23. To do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied;

24. To invest in, purchase or make commitments to purchase securities or other obligations secured by or payable from mortgage loans on, or issued for the purpose of financing or otherwise assisting land development or residential housing for persons or families of low or moderate income;

25. To acquire, develop and own multifamily residential housing as hereinafter provided;

26. To enter into agreements with owners of housing developments eligible for federal low-income housing credits as hereinafter provided in this chapter;

27. To exercise any of the powers granted by this chapter for the purpose of financing an economically mixed project and, if such project is within a revitalization area designated in or pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial, or other economic development of such area; provided that a capital reserve fund shall not be created for any such financing pursuant to § 36-55.41;

28. To make and enter into contracts and agreements to act as the loan servicer for a housing lender on properties located in or outside of the Commonwealth to persons and families of any income; and

29. To indemnify other parties against liabilities, obligations, losses, payments, damages, expenses, and costs as may be necessary or appropriate to the exercise of any power herein granted or reasonably implied, provided that (i) such indemnification shall be payable solely from the funds of the HDA and (ii) such indemnification shall not constitute a debt or obligation of the Commonwealth, and the Commonwealth shall not be liable therefor.

1972, c. 830; 1975, c. 536; 1979, c. 613; 1986, c. 6; 1987, c. 254; 1990, c. 956; 1996, c. 498; 1998, c. 442; 2004, c. 187; 2011, c. 690; 2012, c. 238.

§ 36-55.30:1. Repealed

Repealed by Acts 1979, c. 374.

§ 36-55.30:2. Housing revitalization areas; economically mixed projects

A. For the sole purpose of empowering the HDA to provide financing in accordance with this chapter, the governing body of any city or county may by resolution designate an area within such city or county as a revitalization area if such governing body shall in such resolution make the following determinations with respect to such area: (i) either (a) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions: dilapidation; obsolescence; overcrowding; inadequate ventilation, light or sanitation; excessive land coverage; deleterious land use; or faulty or inadequate design, quality or condition; or (b) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area. Any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of this title, any census tract in which 70 percent or more of the families have incomes which are 80 percent or less of the statewide median income as determined by the federal government pursuant to Section 143 of the United States Internal Revenue Code or any successor code provision on the basis of the most recent decennial census for which data are available, and any census tract which is designated by the United States Department of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent shall be deemed to be designated as a revitalization area without adoption of the above described resolution of the city or county. In any revitalization area, the HDA may provide financing for one or more economically mixed projects and, in conjunction therewith, any nonhousing buildings that are incidental to such project or projects or are determined by the governing body of the city or county to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development thereof.

B. The HDA may finance an economically mixed project that is not within a revitalization area if the governing body of the city or county in which such project is or will be located shall by resolution determine (i) either (a) that the ability to provide residential housing and supporting facilities that serve persons or families of lower or moderate income will be enhanced if a portion of the units therein are occupied or held available for occupancy by persons and families who are not of low and moderate income or (b) that the surrounding area of such project is, or is expected in

the future to be, inhabited predominantly by lower income persons and families and will benefit from an economic mix of residents in such project and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

C. In any economically mixed project financed under this section, the percentage of units occupied or held available for occupancy by persons and families who are not of low and moderate income, as determined as of the date of their initial occupancy of such units, shall not exceed 80 percent.

1979, c. 374; 1996, cc. 77, 498; 2004, c. 187; 2006, c. 784.

§ 36-55.30:3. Regulations; adoption procedures

A. The HDA shall have the power to adopt, amend and repeal regulations, not inconsistent with this chapter or other applicable laws, to carry into effect the powers and purposes of the HDA and the conduct of its business. Such regulations shall be designed to effectuate the general purposes of this chapter.

B. The full text or an informative summary of any proposed new regulation, or any amendment to or repeal of a regulation shall be published not less than fifteen nor more than thirty days before the same may be acted upon and shall state the time and place of a public hearing at which the matters mentioned therein will be considered, at which time any person wishing to comment shall be heard and any written comments shall be considered. Such publication shall be in a newspaper of general circulation published in Richmond and in addition, as HDA may determine, it may be similarly published in newspapers in localities particularly affected as well as publicized through press releases and other media as will best serve the purpose and subject involved.

C. If HDA is satisfied that the proposed regulation or amendments thereto or repeal thereof, or any part thereof, in the form in which it was proposed or changed as a result of such public hearing, provided the changes do not alter the main purpose of the regulation, is advisable, such regulation, amendment to or repeal of a regulation, or any part thereof, may be adopted and, if adopted, shall be published as prescribed in subsection B of this section and shall state the date when it is to become effective.

1979, c. 613; 1988, c. 364.

§ 36-55.31. Powers relative to making mortgage loans and temporary construction loans to housing sponsors and persons and families of low and moderate income

The HDA shall have all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others herein granted:

(1) through (3) [Repealed.]

(4) Enter into agreements and contracts with housing sponsors under the provisions of this section;

(5) Institute any action or proceeding against any housing sponsor or persons and families of low or moderate income receiving a loan under the provisions hereof, or owning any housing development hereunder in any court of competent jurisdiction in order to enforce the provisions of this chapter, the terms and provisions of any agreement or contract between HDA and such recipients of loans under the provisions hereof, including without limitation provisions as to rental or carrying charges and income limits as applied to tenants or occupants, or to foreclose its mortgage, or to protect the public interest, persons and families of low and moderate income, stockholders, or creditors of such sponsor. In connection with any such action or proceeding it may apply for the appointment of a trustee or receiver to take over, manage, operate and maintain the affairs of a housing sponsor and HDA through such agent as it shall designate is hereby authorized to accept appointment as trustee or receiver of any such sponsor when so appointed by a court of competent jurisdiction.

The reorganization of any housing sponsor shall be subject to the supervision and control of HDA, and no such reorganization shall be had without the consent of HDA. Upon any such reorganization the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by HDA, but not in excess of the fair value of the property received;

(6) In any foreclosure action involving a housing sponsor other than a foreclosure action instituted by HDA, the municipality in which any housing development is situate shall, in addition to other necessary parties, be made parties defendant. HDA and the municipality shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against HDA or the municipality.

Subject to the terms of any applicable agreement, contract or other instrument entered into or obtained pursuant to this chapter, judgment of foreclosure shall not be entered unless the court to which application therefor is made shall be satisfied that the interest of the lienholders or holders of bonds or other obligations cannot be adequately secured or safeguarded except by the sale of the property; and in such proceeding the court shall be authorized to make an order increasing the rental or carrying charges to be charged for the housing accommodations in the housing development involved in such foreclosure, or appoint a member of HDA or any officer of the municipality, as a receiver or trustee of the property, or grant such other and further relief as may be reasonable and proper; and in the event of a foreclosure or other judicial sale, the property shall be sold only to a housing sponsor which will manage, operate and maintain the housing development subject to the provisions of this chapter, unless the court shall find that the interest and principal on the obligations secured by the lien which is the subject of foreclosure cannot be earned under the limitations imposed by the provisions of this chapter and that the proceeding was brought in good faith, in which event the property may be sold free of limitations imposed by

this chapter or subject to such limitations as the court may deem advisable to protect the public interest;

(7) In the event of a judgment against any housing sponsor in any action not pertaining to the foreclosure of a mortgage, there shall be no sale of any of the real property included in any housing development hereunder of such housing sponsor except upon 60 days' written notice to HDA. Upon receipt of such notice HDA shall take such steps as in its judgment may be necessary to protect the rights of all parties;

(8) In the event of violation by a housing sponsor of any provision of a loan, the terms of any agreement between HDA and the housing sponsor, the provisions of this chapter or of any rules or regulations duly promulgated pursuant to the provisions of this chapter, HDA may remove any or all of the existing directors or officers of such corporate housing sponsor and may appoint such person or persons who HDA in its sole discretion deems advisable as new directors or officers to serve in the places of those removed notwithstanding the provisions of any other law and may designate a managing agent with complete and exclusive power to act on behalf of a defaulting partnership housing sponsor; provided, however, that any such directors or officers or managing agents so appointed by HDA shall serve only for a period coexistent with the duration of such violation or until HDA is assured in a manner satisfactory to it against violations of a similar nature or both. Officers or directors so appointed need not be stockholders or meet other qualifications which may be prescribed by the certificate of incorporation or by other laws governing such qualified housing sponsor;

(9) Foreclose under deeds of trust by powers of sale pursuant to Title 55 and amendments thereto;

(10) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to housing sponsors to finance the ownership and operation of housing developments and multifamily residential housing intended for occupancy by persons and families of low and moderate income, upon the terms and conditions set forth in subsections A and B of § 36-55.33:1;

(11) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to persons and families of low and moderate income to finance the purchase or refinancing of single-family residential housing, upon the terms and conditions set forth in subsections A and C of § 36-55.33:1;

(12) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to housing sponsors and persons and families of low and moderate income to finance the construction, rehabilitation, preservation or improvement of housing developments and residential housing intended, upon completion of such construction, rehabilitation, preservation or improvement, for ownership or occupancy by persons and families of low and moderate income, upon the terms and conditions set forth in subsections A and D of § 36-55.33:1;

(13) Make, undertake commitments to make and participate in the making of mortgage loans to finance the construction, rehabilitation, preservation or improvement, or ownership and operation, of economically mixed projects and, if any such project is within a revitalization area designated in or pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area, upon the terms and conditions set forth in subsections A and E of § 36-55.33:1.

1972, c. 830; 1975, c. 536; 1979, c. 374; 2004, c. 187.

§ 36-55.31:1. Loans for installation of certain energy-saving devices

The Virginia Housing Development Authority shall establish a program of loans for financing the purchase and installation of insulation, storm windows and doors and solar or other alternative energy sources which will reduce the reliance on present sources of energy for use in the dwellings of residents of the Commonwealth or public or nonprofit buildings or facilities. Any and all funds available through specific state appropriations or federal grants or other state or federal assistance for such purposes may be utilized by the Virginia Housing Development Authority. Any loan made pursuant to this section may be secured by a mortgage or otherwise or may be unsecured, shall be repaid, shall bear interest and shall be upon such terms and conditions as may be determined by HDA in its rules and regulations or in the HDA resolution, or commitment for, such loan. Any such loans made with respect to dwellings of residents of the Commonwealth shall be limited to dwellings occupied by persons or families of low and moderate income. The Commissioners of the Virginia Housing Development Authority shall promulgate rules and regulations for the orderly administration of this section.

1977, c. 431; 1978, c. 631.

§ 36-55.32. Powers relative to purchase and sale to mortgage lenders of mortgage loans; loans to mortgage lenders

The HDA shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To invest in, purchase or to make commitments to purchase, and take assignments from mortgage lenders, of notes and mortgages evidencing loans for the construction, rehabilitation, purchase, leasing or refinancing of residential housing for persons and families of low and moderate income in this Commonwealth upon the terms set forth in § 36-55.35;

(2) To make loans to mortgage lenders under terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new residential mortgage loans to finance multi-family or single-family residential housing for persons and families of low and moderate income, upon the terms set forth in § 36-55.35;

(3) To make commitments to purchase, and to purchase, service and sell mortgages insured by any department, agency or instrumentality of the United States, and to make loans directly upon the security of any such mortgage, provided the underlying mortgage loans shall have been made and shall be continued to be used solely to finance or refinance the construction, rehabilitation, purchase or leasing of residential housing for persons and families of low and moderate income in this Commonwealth;

(4) To sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by HDA;

(5) To enter into mortgage insurance agreements with mortgage lenders in connection with the lending of money by such institutions to persons and families of low and moderate income for the purchase of residential housing;

(6) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders and acquire or take possession of such collateral and sell the same at public or private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interests of HDA therein.

1972, c. 830; 1975, c. 536; 1982, c. 152.

§ 36-55.33. Repealed

Repealed by Acts 1975, c. 536.

§ 36-55.33:1. Mortgage loan terms and conditions

A. All mortgage loans made by HDA pursuant to § 36-55.31 of this chapter shall be subject to the following terms and conditions:

1. The ratio of mortgage loan principal amount to total housing development costs and the amortization period of any mortgage loans made by HDA which are federally insured mortgages, in whole or in part, or which are otherwise assisted or aided, directly or indirectly, by the federal government, shall be governed by the rules and regulations provided in or pursuant to the federal government program under which the HDA mortgage loan or part thereof is insured, guaranteed, assisted or aided; but in no event shall such amortization period exceed 50 years.

2. A mortgage loan made by HDA may be prepaid to maturity after a period of years, and on such terms and conditions, as are determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

3. HDA shall have authority to establish and modify from time to time the interest rates at which it shall make mortgage loans and commitments therefor. Such interest rates shall be established by HDA in its sole discretion at the lowest level consistent with HDA's cost of operation and its responsibilities to the holders of its bonds, bond anticipation notes and other obligations. In addition to such interest charges, HDA may make and collect such fees and charges, including but not

limited to reimbursement of HDA's financing costs, service charges, insurance premiums and mortgage insurance premiums, as HDA determines to be reasonable. No person shall, by way of defense or otherwise, avail himself of any of the provisions of Chapter 3 (§ 6.2-300 et seq.) of Title 6.2 to avoid or defeat the payment of any interest or fee which he shall have contracted to pay on any loan or forbearance of money made, directly or indirectly, or assisted in any manner by HDA under or pursuant to this chapter.

B. Mortgage loans made by HDA to housing sponsors to finance the ownership and operation of housing developments and multifamily residential housing intended for occupancy by persons and families of low and moderate income, pursuant to subdivision (10) of § 36-55.31, shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to an HDA mortgage loan to a limited profit housing sponsor shall not exceed 95 percent of the total housing development costs and to a nonprofit housing sponsor shall not exceed 100 percent of the total housing development costs. Subsequent to the disbursement of such amount, additional amounts may be from time to time disbursed if the sum of the amount to be so disbursed and the then outstanding principal balance of the HDA mortgage loan does not exceed 95 percent of the market value of the housing development or residential housing as then determined by the Authority. The amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan; but in no event shall such amortization period exceed 50 years.

2. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may contain exculpatory provisions relieving the housing sponsor or its principal or principals from personal liability if deemed desirable by HDA.

3. With respect to any such HDA mortgage loan made to a limited profit housing sponsor, HDA may require that such limited profit housing sponsor not make distributions in any one year with respect to the housing development or multifamily residential housing financed by such HDA mortgage loan in excess of such percentage of such limited profit housing sponsor's equity in the housing development or multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for such mortgage loan. None of the partners, principals, stockholders or holders of a beneficial interest in such limited profit housing sponsor shall earn, accept or receive a return in any one year with respect to the housing development or multifamily residential housing financed by such HDA mortgage loan greater than his applicable proportion of any such percentage of such limited profit housing sponsor's equity in the housing development or multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

The right to any such limited distribution or return may be cumulative to the extent provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. For the purpose of this section, the terms "distribution" and "return" are intended to mean payments on account of the housing development or multifamily residential housing financed by such HDA mortgage loan resulting from the operation thereof. Any payment to a person or entity who is a partner, principal, stockholder or holder of a beneficial interest in such limited profit housing sponsor shall not be deemed a "distribution" or "return" to such person or entity if the funds with which such payment is made are funds paid or contributed to such limited profit housing sponsor by persons or entities purchasing a beneficial interest in such limited profit housing sponsor. At or after the completion of construction, rehabilitation or improvement of the housing development or multifamily residential housing financed by such HDA mortgage loan, such limited profit housing sponsor's equity in the housing development or multifamily residential housing shall be established in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for such mortgage loan. Such equity shall be determined by HDA, at its option, as either (i) the difference between the total housing development costs as to the housing development or multifamily residential housing and the final principal amount of such HDA mortgage loan, or (ii) the difference between the fair market value of such housing development and the final principal amount of such HDA mortgage loan. HDA may thereafter from time to time adjust such equity to be equal to the difference, as of the date of adjustment, between the fair market value of such housing development and the outstanding principal balance of such HDA mortgage loan. HDA may review and regulate a proposed retirement of any capital investment in, or redemption of any stock of, such limited profit housing sponsor in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

4. With respect to any such HDA mortgage loan, HDA may require the housing sponsor and other parties related to the housing development or multifamily residential housing financed by such HDA mortgage loan to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such housing sponsor and its partners, principals or stockholders to limitations established by HDA as to rentals and other charges, profits, fees, the use and disposition of the real property constituting the site of or relating to the housing development or multifamily residential housing and other property of such housing sponsor, and the use and disposition of franchises of such housing sponsor to the extent more restrictive limitations are not provided by the law under which such housing sponsor is incorporated or organized.

5. As a condition of any such HDA mortgage loan, HDA shall have the power to supervise the housing sponsor in accordance with the provisions of § 36-55.34:1 at all times during which such HDA mortgage loan is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan.

C. Mortgage loans made by HDA to persons and families of low and moderate income to finance the purchase or refinancing of single-family residential housing, pursuant to subdivision (11) of § 36-55.31, shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to such HDA mortgage loan shall not exceed 100 percent of the sales price or market value of the single-family residential housing, as determined or approved by or on behalf of HDA. HDA may also disburse additional amounts to finance such closing costs and fees as it may deem necessary or appropriate, and all such disbursements and financings of closing costs and fees subsequent to the enactment of this chapter are hereby validated. The amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan; but in no event shall such amortization period exceed 50 years. If during the term of the HDA mortgage loan (i) the outstanding principal balance of the HDA mortgage loan is expected to increase to an amount in excess of the original principal balance or (ii) the amount of monthly payments on the HDA mortgage loan will or may be adjusted, HDA shall so notify the applicants prior to the execution of the HDA mortgage loan. Such notice shall describe the terms and conditions under which the outstanding principal balance or the amount of monthly payments, or both, may be so increased or adjusted, and such notice shall be signed by the applicants.

2. Such an HDA mortgage loan shall be made only after a determination that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and the HDA resolution authorizing, or commitment for, such mortgage loan shall contain such a determination.

3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. With respect to any such HDA mortgage loan, HDA may require the person or family of low or moderate income to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such person or family of low or moderate income relating to the use, occupancy, maintenance and sale of the single-family residential housing financed by such HDA mortgage loan and the payment, prepayment and assignment of such HDA mortgage loan.

D. Mortgage loans made by HDA to housing sponsors or persons or families of low or moderate income to finance the construction, rehabilitation, preservation or improvement of housing developments or residential housing intended, upon completion of such construction, rehabilitation, preservation or improvement, for ownership or occupancy by persons and families of low and moderate income, pursuant to subdivision (12) of § 36-55.31 of this chapter, shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to such an HDA mortgage loan to a limited profit housing sponsor shall not exceed 95 percent of the total housing development costs and to a nonprofit housing sponsor or a person or family of low or moderate income shall not exceed 100 percent of the total housing development costs. Subsequent to the disbursement of such amount, additional amounts may be from time to time disbursed if the sum of the amount to be so disbursed and the then outstanding principal balance of the HDA mortgage loan does not exceed 95 percent of the market value of the housing development or residential housing as then determined by the Authority. Without regard as to whether HDA intends to remain the lender in respect to such mortgage loan throughout the amortization period thereof, the amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

2. In considering any application for such an HDA mortgage loan, HDA shall give first priority to applications relating to housing developments or residential housing which are or will be well-planned and well-designed, and also shall give consideration to:

a. The comparative need for housing for persons and families of low and moderate income in the area proposed to be served by the housing development or residential housing;

b. The ability of the applicant to construct, rehabilitate or improve and market or operate, manage and maintain the housing development or residential housing;

c. The existence of zoning or other regulations to protect adequately the housing development or residential housing against detrimental future uses which could cause undue depreciation in the value of the housing development or residential housing;

d. The availability of adequate parks, recreational areas, utilities, schools, transportation and parking; and

e. The existence of statewide housing plans.

3. With respect to any such HDA mortgage loan, HDA may require the housing sponsor, person or family of low or moderate income, contractors, architects, marketing agents, management agents and other parties related to the housing development or residential housing financed by such HDA mortgage loan to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such housing sponsor and its partners, principals or stockholders or such person or family of low or moderate income to limitations established by HDA as to rentals and other charges, profits, fees, the use and disposition of the real property constituting the site of or relating to the housing development or residential housing and other property of such housing sponsor, and the use and disposition of franchises of such housing sponsor to the extent more restrictive limitations are not provided by the law under which such housing sponsor is incorporated or organized. HDA shall require the housing sponsor or person or family of low or moderate income receiving such HDA mortgage loan, or the construction contractor, or both, to furnish such assurances of completion

of the construction, rehabilitation or improvement as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

4. As a condition of any such HDA mortgage loan to a housing sponsor, HDA shall have the power to supervise such housing sponsor in accordance with the provisions of § 36-55.34:1 at all times during which such HDA mortgage loan is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan.

5. With respect to any such HDA mortgage loan, the provisions of subdivisions 2 and 3 of subsection B of this section shall be applicable.

E. Mortgage loans made by HDA pursuant to subdivision 13 of § 36-55.31 to finance the construction, rehabilitation, preservation or improvement, or ownership and operation, of economically mixed projects or portions thereof and, if any such project is within a revitalization area designated in or pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such governing body of the city or county to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The principal amount of such an HDA mortgage loan shall not exceed 95 percent of the total housing development costs, and the amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or in the commitment for, such mortgage loan; but in no event shall such amortization period exceed 50 years.

2. Such an HDA mortgage loan shall be made only if the provisions of § 36-55.30:2 are satisfied.

3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may contain exculpatory provisions relieving a housing sponsor, if any, or its principal or principals from personal liability if deemed desirable by HDA.

4. The nonhousing buildings shall be financed by such an HDA mortgage loan only if the HDA shall receive a certification from the housing sponsor that a mortgage loan for the financing of such nonhousing buildings is not otherwise available from private lenders upon reasonably equivalent terms and conditions.

1975, c. 536; 1979, c. 374; 1982, c. 176; 1987, c. 164; 1988, c. 556; 1989, c. 161; 1991, c. 447; 2004, c. 187; 2010, c. 794.

§ 36-55.33:2. Powers relative to acquisition, development and ownership by HDA of multifamily residential housing

A. HDA shall have all the powers necessary or convenient to purchase, acquire, construct, rehabilitate, own, operate, improve, repair, maintain, encumber, mortgage, lease, sell and transfer or otherwise dispose of multi-family residential housing or any part or interest therein for occupancy by persons and families of low and moderate income. For the purposes of this section, HDA may form corporations, joint ventures, partnerships, trusts or other legal entities or any combination thereof, on its own behalf or in conjunction with individuals or other public or private entities, to serve as housing sponsors for multi-family residential housing developments; may acquire, own, encumber, pledge, sell, transfer or otherwise dispose of interests in such housing sponsors; may provide financing and other funding to such housing sponsors; and may exercise all necessary or convenient rights and powers and perform all requisite duties and obligations relating thereto. HDA shall not exercise the powers granted under this section with respect to any multi-family residential housing development, unless HDA makes the following findings:

1. That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low income or moderate income can afford within the general housing market area to be served by the proposed housing development.

2. That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low and moderate income can afford.

3. That private sponsors would not be willing, without assistance, to undertake the proposed housing development upon substantially similar terms and conditions.

4. That HDA has not received notification from both the local housing authority having jurisdiction over the area in which the housing development would be located and the sponsor of such development that it is the preference of both parties that the local housing authority undertake the proposed housing development.

5. That the proposed housing development will provide well-planned, well-designed housing for persons or families of low and moderate income.

6. That the housing development will be of public use and will provide a public benefit.

7. That the housing development will be undertaken within the authority conferred by this chapter upon HDA.

B. HDA shall also find, in connection with the new construction or substantial rehabilitation by HDA of any proposed multi-family residential housing development, that the governing body of the locality in which such housing development is to be located has not, within sixty days after written notification of such proposed construction or substantial rehabilitation has been sent by HDA to such governing body and to any local housing authority having jurisdiction in such locality, certified to HDA in writing its disapproval of the proposed multi-family residential housing

development. The foregoing notwithstanding, no such finding need be made if HDA has received from the governing body its certified resolution approving the proposed housing development.

C. At least sixty days prior to purchasing, acquiring, constructing or rehabilitating any multi-family residential housing development pursuant to this section, HDA shall publish a notice in a newspaper of general circulation in the locality in which such development is to be located. Such notice (i) shall state that HDA intends to purchase, acquire, construct or rehabilitate a multi-family residential housing development or developments in such locality and shall solicit proposals from interested parties for such purchase, acquisition, construction or rehabilitation or (ii) shall identify the multi-family residential housing development or developments to be purchased, acquired, constructed or rehabilitated and shall request comments from the general public with respect to such proposed purchase, acquisition, construction or rehabilitation.

D. In the event HDA or any legal entity formed by HDA is to construct or rehabilitate a multi-family residential housing development pursuant to this section, HDA or such legal entity shall contract with a private firm for the performance of such construction and rehabilitation, unless HDA determines that no responsible private firm would be willing and able to contract for such construction or rehabilitation at a price necessary for the financial feasibility of such development. HDA or any legal entity formed by HDA shall contract with a private firm or public body for the performance of management services for any multi-family residential housing development owned by HDA or such legal entity pursuant to this section, unless HDA determines that no responsible private firm and no public body would be willing and able to contract for the performance of such management services at a price necessary for the financial feasibility of such development. For the purpose of this subsection, the term "private firm" shall include an individual, joint venture, partnership, stock corporation, trust or other similar business entity legally authorized to perform the construction, rehabilitation or management, as may be applicable, of the proposed multi-family residential housing development.

1987, c. 254; 1991, c. 206; 1996, c. 298.

§ 36-55.34. Repealed

Repealed by Acts 1975, c. 536.

§ 36-55.34:1. Power to supervise housing sponsors

Subject to such limitations and conditions as may be agreed to by HDA, HDA shall have the power to supervise a housing sponsor and its real and personal property, at all times during which an HDA mortgage loan to such housing sponsor is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan, in the following respects:

1. Through its agents or employees, HDA may enter upon and inspect the housing development or residential housing and any nonhousing buildings, including all parts thereof, financed by such HDA mortgage loan, for the purpose of investigating the physical and financial condition thereof,

and its construction, rehabilitation, operation, management and maintenance, and may examine all books and records with respect to capitalization, income, expenditures and other matters relating thereto;

2. HDA may supervise the operation and maintenance of the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan and may order such alterations, changes or repairs as HDA may deem to be necessary to protect the security of its investment, the public interest, or the health, safety or welfare of the occupants of such housing development or residential housing and any nonhousing buildings;

3. HDA may order such housing sponsor, or the management agent or other parties related to the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan, to perform such actions as may be necessary to comply with the provisions of all applicable laws or ordinances, HDA's rules and regulations or the terms of any agreement concerning such housing development or residential housing and any nonhousing buildings, or to refrain from doing any acts in violation thereof; and in this regard HDA shall be a proper party to file a complaint and to prosecute thereon for any violations of laws or ordinances as set forth herein;

4. HDA may prescribe uniform systems of accounts and records for housing sponsors and may require such housing sponsors to make reports, make certifications as to expenditures and give answers to specific questions on such forms and at such times as HDA may deem to be necessary for the purposes of this chapter;

5. HDA may establish and alter from time to time a schedule of rents and charges for the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan, and HDA may establish standards for, and may monitor and regulate, tenant or occupant selection by such housing sponsor;

6. HDA may require such housing sponsor to pay to HDA such fees and charges as it may prescribe in connection with the examination, inspection, supervision, auditing or other regulation of the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan or of such housing sponsor;

7. In its rules and regulations HDA shall specify the categories of cost which shall be allowable in the construction, rehabilitation, preservation or improvement of a housing development or residential housing and any nonhousing buildings, and HDA shall require such housing sponsor to certify the actual housing development costs upon completion of the housing development or residential housing and any nonhousing buildings, subject to audit and determination by HDA, or shall require such housing sponsor to provide such other assurances of such housing development costs as HDA shall deem necessary to enable HDA to determine with reasonable accuracy the actual amount of such housing development costs; and

8. The provisions of any agreements which provide for the regulation and supervision by HDA of any housing development or residential housing and any nonhousing buildings shall, when duly recorded among the land records of the jurisdiction or jurisdictions in which the housing development or residential housing and any nonhousing buildings are located, run with the land and be binding on the successors and assigns of the owner thereof until released of record by HDA.

1975, c. 536; 1987, c. 164; 1991, c. 447; 2004, c. 187.

§ 36-55.34:2. Power to enter into agreements with owners of housing developments eligible for federal low-income housing credits

HDA may enter into agreements with the owners of housing developments which are or will be eligible for low-income housing credits under the United States Internal Revenue Code. Any such agreement shall contain covenants and restrictions as shall be required by the United States Internal Revenue Code and such other provisions as HDA shall deem necessary or appropriate. Any such agreement shall be enforceable in accordance with its terms in any court of competent jurisdiction in the Commonwealth by HDA or by such other persons as shall be specified in the United States Internal Revenue Code. Any such agreement, when duly recorded as a restrictive covenant among the land records of the jurisdiction or jurisdictions in which the development is located, shall run with the land and be binding on the successors and assigns of the owner. All references in this section to the United States Internal Revenue Code shall include any amendments thereto and any rules and regulations promulgated thereunder, as the foregoing may be or become effective at any time.

1990, c. 956 .

§ 36-55.35. Terms and conditions of purchase from and sale to mortgage lenders of mortgage loans; loans to mortgage lenders

A. Except in the case of a mortgage loan that, when made by the mortgage lender, is to be purchased by HDA, no obligation shall be eligible for purchase or commitment to purchase by HDA from a mortgage lender hereunder if the date of said obligation precedes the date of HDA's commitment to purchase such obligation by such number of years as shall be determined by HDA and unless at or before the time of transfer thereof to HDA such mortgage lender certifies:

1. That in its judgment the loan would in all respects be a prudent investment; and

2. That the proceeds of sale or its equivalent shall be reinvested as provided in subsection F of this section, or invested in short-term obligations pending such reinvestment. However, certification pursuant to this subsection shall not be required in the case of the purchase or commitment to purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof.

B. HDA shall purchase mortgage loans at a purchase price equal to the outstanding principal balance; however, discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return which in the opinion of HDA is consistent with the

obligations of the HDA hereunder and the purposes of this chapter. In addition to the aforesaid payment of outstanding principal balance HDA shall pay the accrued interest due thereon, on the date the loan or obligation is delivered against payment therefor. The provisions of this subsection shall not apply to the purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof, in which case the purchase price shall be determined by agreement of HDA and the mortgage lender.

C. Loans purchased or sold hereunder may include but shall not be limited to loans which are insured, guaranteed or assisted by the federal government or for which there is a commitment by the federal government to insure, guarantee or assist such loan.

D. HDA shall from time to time adopt, modify or repeal rules and regulations governing the making of loans to mortgage lenders and the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules and regulations as to any or all of the following:

1. Procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans or for loans to mortgage lenders;

2. Limitations or restrictions as to number of family units, location or other qualifications or characteristics of residences to be financed by residential mortgage loans and requirements as to the income limits of persons and families of low and moderate income occupying such residences;

3. Restrictions as to the interest rates on residential mortgage loans or the return realized therefrom by mortgage lenders;

4. Requirements as to commitments by mortgage lenders with respect to residential mortgage loans;

5. Schedules of any fees and charges necessary to provide for expenses and reserves of the HDA; and

6. Any other matters related to the duties and the exercise of the powers of HDA to purchase and sell mortgage loans or to make mortgage loans or other loans to mortgage lenders.

Such rules and regulations shall be designed to effectuate the general purposes of this chapter and the following specific objectives: (i) the expansion of the supply of funds in the Commonwealth available for residential mortgage loans; (ii) the provision of the additional housing needed to remedy the shortage of adequate housing in the Commonwealth and eliminate the existence of a large number of substandard dwellings; and (iii) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions.

E. The interest rate or rates and other terms of the loans to mortgage lenders made from the proceeds of any issue of bonds of the HDA shall be at least sufficient so as to assure the payment of said bonds and the interest thereon as the same become due from the amounts received by HDA in repayment of such loans and interest thereon.

F. HDA shall require as a condition of each loan to a mortgage lender and as a condition of the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender that such mortgage lender within such period of time following the receipt of the proceeds as shall be prescribed by rules and regulations of HDA, shall have entered into written commitments to make, and shall thereafter proceed as promptly as practicable to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than twenty years from the date thereof in an aggregate principal amount equal to the amount of such proceeds. HDA shall not purchase nor make commitment to purchase mortgage loans or obligations from a mortgage lender from which it has previously purchased mortgage loans nor make a loan to a mortgage lender to which it has previously made a loan unless said mortgage lender has either restored or made commitments to restore to its portfolio of residential mortgage loans in the Commonwealth of Virginia, residential mortgage loans having a stated maturity of not less than twenty years from the date thereof in an aggregate principal amount equal to either the proceeds of prior sale or the amount of prior loan to said mortgage lender. HDA may require the submission to it by each mortgage lender of evidence satisfactory to it of the making of such new residential mortgage loans. The provisions of this subsection shall not apply to the purchase or commitment to purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof or a mortgage loan that, when made by the mortgage lender, is to be purchased by HDA.

G. HDA shall require that such loans to mortgage lenders shall be additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security in such amounts as HDA shall by resolution determine to be necessary to assure the payment of such loans and the interest thereon as the same become due. Such collateral security shall consist of (a) direct obligations of, or obligations guaranteed by, the United States of America or the Commonwealth of Virginia; (b) bonds, debentures, notes or other evidences of indebtedness, satisfactory to the HDA, issued by any of the following federal agencies: Bank for Cooperatives, Federal Intermediate Credit Bank, Federal Home Loan Bank System, Export-Import Bank of Washington, Federal Land Banks, the Federal National Mortgage Association or the Government National Mortgage Association; (c) direct obligations of or obligations guaranteed by the Commonwealth; or (d) mortgages insured or guaranteed, upon terms and conditions satisfactory to the HDA, by the federal government or private mortgage insurance companies as to payment of principal and interest.

1972, c. 830; 1975, c. 536; 1982, c. 101; 1996, c. 298; 2011, cc. 218, 224.

§ 36-55.36. Terms and conditions of mortgage insurance

(1) For mortgage payments to be eligible for insurance under the provisions of this chapter, the underlying mortgage loan shall: (a) be one which is made to and held by a mortgagee approved by HDA as responsible and able to service the mortgage properly; (b) not exceed (i) 100% of the estimated cost of such proposed housing development if owned or to be owned by a nonprofit

mortgagor or if owned by a person or family of low or moderate income, in the case of a single-family dwelling or condominium; or, (ii) 95% of the estimated cost of the proposed housing development if owned or to be owned by any other mortgagor; (c) have a maturity satisfactory to HDA but in no case longer than 80% of HDA's estimate of the remaining useful life of said housing or 40 years from the date of the issuance of insurance, whichever is earlier; (d) contain amortization provisions satisfactory to HDA requiring periodic payments by the mortgagor not in excess of his reasonable ability to pay as determined by HDA; (e) be in such form and contain such terms and provisions with respect to maturity, property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, equitable and legal redemption rights, prepayment privileges and other matters as HDA may prescribe.

(2) All applications for mortgage insurance shall be forwarded, together with an application fee prescribed by HDA, to the executive director of HDA. HDA shall cause an investigation of the proposed housing to be made, review the application and the report of the investigation, and approve or deny the application. No application shall be approved unless HDA finds that it is consistent with the purposes of this chapter and further finds that the financing plan for the proposed housing is sound. HDA shall notify the applicant and the proposed lender of its decision. Any such approval shall be conditioned upon payment to HDA, within such reasonable time and after notification of approval as may be specified by HDA, of the commitment fee prescribed by HDA.

(3) HDA shall fix mortgage insurance premiums for the insurance of mortgage payments under the provisions of this chapter. Such premiums shall be computed as a percentage of the principal of the mortgage outstanding at the beginning of each mortgage year, but shall not be more than one-half of one per centum per year of such principal amount. The amount of premium need not be uniform for all insured loans. Such premiums shall be payable by mortgagors or mortgagees in such manner as prescribed by HDA.

(4) In the event of default by the mortgagor, the mortgagee shall notify HDA both of the default and the mortgagee's proposed course of action. When it appears feasible, HDA may for a temporary period upon default or threatened default by the mortgagor authorize mortgage payments to be made by HDA to the mortgagee which payments shall be repaid under such conditions as HDA may prescribe. HDA may also agree to revised terms of financing when such appear prudent. The mortgagee shall be entitled to receive the benefits of the insurance provided herein upon: (a) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of HDA by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure, provided all claims of the mortgagee against the mortgagor or others arising from the mortgage, foreclosure, or any deficiency judgment shall be assigned to HDA without recourse except such claims as may have been released with the consent of HDA; or (b) the expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of strict foreclosure, foreclosure by sale or other judicial sale, or under a

deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to HDA with an assignment, without recourse, to HDA of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure, or deficiency judgment; or (c) the acceptance by HDA of title to the property or an assignment of the mortgage, without recourse to HDA, in the event HDA determines it imprudent to proceed under (a) or (b) above. Upon the occurrence of either (a), (b) or (c) hereof, the obligation of the mortgagee to pay premium charges for insurance shall cease, and HDA shall, within thirty days thereafter, pay to the mortgagee ninety-eight percent of the sum of (i) the then unpaid principal balance of the insured indebtedness, (ii) the unpaid interest to the date of conveyance or assignment to HDA, as the case may be, (iii) the amount of all payments made by the mortgagee for which it has not been reimbursed for taxes, insurance, assessments and mortgage insurance premiums, and (iv) such other necessary fees, costs or expenses of the mortgagee as may be approved by HDA.

(5) Upon request of the mortgagee, HDA may at any time, under such terms and conditions as it may prescribe, consent to the release of the mortgagor from his liability or consent to the release of parts of the property from the lien of the mortgage, or approve a substitute mortgagor or sale of the property or part thereof.

(6) No claim for the benefit of the insurance provided in this chapter shall be accepted by HDA except within one year after any sale or acquisition of title of the mortgaged premises described in subdivision (a) or (b) of subsection (4) of this section.

1972, c. 830; 1975, c. 536.

§ 36-55.36:1. Power to create insurance funds and form corporations for the purpose of insuring HDA mortgage loans

HDA shall have the power to create one or more insurance funds and to form one or more corporations for the purpose of providing replacement mortgage guaranty insurance, upon such terms and conditions as HDA shall prescribe, on mortgage loans made or financed by HDA pursuant to this chapter for which (i) mortgage guaranty insurance is being provided by a company which, subsequent to the provision of such coverage, has experienced a drop in rating by a nationally recognized credit rating service which could result in a rating for the bonds which would be in nonconformance with the rating covenants of the related bond indenture; and (ii) the executive director of HDA executes an affidavit stating that HDA was unable, after diligent effort, to procure replacement mortgage guaranty insurance in a form and premium acceptable to HDA from another insurer licensed in this Commonwealth to transact mortgage guaranty insurance business. For purposes of this section, "diligent effort" means a good faith search by HDA for mortgage guaranty insurance among admitted insurers resulting in declinations of coverage, by three unaffiliated insurers licensed and authorized in this Commonwealth to write the mortgage guaranty insurance coverage sought, at a premium equal to or less than the premium in force for the loans made or financed by HDA. HDA may provide financing and other funding to any such fund or corporation

and may exercise all necessary or convenient rights and powers and perform all requisite duties and obligations relating thereto. Any such fund or corporation shall be subject to the direction and control of the commissioners of HDA and shall have such powers and duties as the commissioners of HDA shall prescribe. Any such fund or corporation may charge such premiums and may establish such reserves as HDA shall specify. HDA may specify that any such reserves shall be assets of such fund or corporation and shall not be subject to the claims of creditors of HDA. Any such fund or corporation, its directors, officers and employees, its assets and operations, and its policies of insurance and the premiums therefor shall not be subject to the provisions of Title 38.2 and rules and regulations issued pursuant thereto. The property of any such fund or corporation and its income and operations shall be exempt from taxation or assessments of every kind by the Commonwealth and all municipalities and other political subdivisions thereof. The provisions of § 36-55.36 shall not be applicable to mortgage guaranty insurance provided under this section.

1990, c. 956 .

§ 36-55.37. Exemption from taxation

(1) As set forth in the declaration of finding and purpose herein, HDA will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the notes and bonds of HDA issued and to be issued pursuant to this chapter, the transfer thereof, and the income therefrom including any profit made on the sale thereof and all its fees, charges, gifts, grants, revenues, receipts, and other moneys received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the municipalities and all other political subdivisions of the Commonwealth.

(2) The property of HDA and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by HDA under the provisions of this chapter.

(3) Any housing development, residential housing or nonhousing building financed in whole or in part pursuant to the provisions of this chapter and owned by HDA shall be exempt from all property taxation and special assessments of the Commonwealth or political subdivisions thereof; provided, however, that in lieu of such taxes, HDA may agree to make such payments to the Commonwealth or any political subdivision thereof as HDA finds consistent with the cost of supplying municipal services to the housing development, residential housing or nonhousing building and maintaining the economic feasibility of the housing development, residential housing or nonhousing building, which payments such bodies are hereby authorized to accept.

1972, c. 830; 1974, c. 263; 2004, c. 187.

§ 36-55.37:1. Repealed

Repealed by Acts 1996, c. 298.

§ 36-55.38. Admission and income limitations relative to housing developments

(1) Admission to housing developments financed pursuant to the provisions of this chapter shall be limited to persons or families of low or moderate income and, in the case of economically mixed projects, such other persons and families as the HDA shall determine, subject to the limitation in subsection C of § 36-55.30:2.

(2) HDA shall make and publish rules and regulations from time to time governing the terms of tenant selection plans and income limits for tenants eligible to occupy housing developments assisted by HDA in conformance with the provisions of this chapter and such income limits may vary with the size and circumstances of the person or family.

(3) HDA shall by rules and regulations provide income standards for continued residence in housing developments assisted by HDA, and either HDA, or with its approval the housing sponsor of any such housing development may terminate the tenancy or interest of any person or family residing in any such housing development whose gross aggregate income exceeds prescribed income standards for a period of six months or more; provided, that no tenancy or interest of any such person or family in any such housing development shall be terminated except upon reasonable notice and opportunity to obtain suitable alternate housing, in accordance with rules and regulations of HDA; provided further, that any such person or family, with the approval of HDA, shall be permitted to continue to occupy the unit, subject to payment of a rent or carrying charges or surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by HDA.

(4) Any person or family residing in a housing development which shall be a cooperative and is required to be removed from the housing development because of excessive income as herein provided shall be discharged from liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed, in accordance with the rules of HDA, for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for such purpose.

1972, c. 830; 1975, c. 536; 1996, c. 498; 2004, c. 187.

§ 36-55.39. Procedure prior to financing of housing developments undertaken by housing sponsors

A. Notwithstanding any other provision of this chapter, HDA is not empowered to finance any housing development undertaken by a housing sponsor pursuant to §§ 36-55.31, 36-55.33:1 and 36-55.34:1 of this chapter unless, prior to the financing of any housing development hereunder, the commissioners or the executive director of HDA find:

1. That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low income or moderate income can afford within the general housing market area to be served by the proposed housing development.

2. That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low and

moderate income can afford or to provide sufficient mortgage financing for residential housing for occupancy by such persons or families.

3. That the housing sponsor or sponsors undertaking the proposed housing development in the Commonwealth will supply well-planned, well-designed housing for persons or families of low and moderate income and, in the case of an economically mixed project, other persons and families and that such sponsors are financially responsible.

4. That the housing development, to be assisted pursuant to the provisions of this chapter, will be of public use and will provide a public benefit.

5. That the housing development will be undertaken within the authority conferred by this chapter upon HDA and the housing sponsor or sponsors.

B. The locality, upon written request from the housing sponsor, shall provide a written staff determination that the proposed development is consistent with current zoning and other land use regulations in effect at the time of such request. Failure of the locality to comply with this subsection within 30 days of the receipt of the written request from the housing sponsor shall be deemed to be a determination that the proposed development is consistent with current zoning and other land use regulations. Prior to financing by the HDA, the housing sponsor shall provide the HDA with (i) a copy of the written staff determination received from the locality, (ii) a written certification that the locality failed to respond to the housing sponsor's request within 30 days as provided herein, or (iii) a copy of any building permit issued by the locality.

1972, c. 830; 1975, c. 536; 1978, c. 297; 1982, c. 175; 1990, c. 461; 1995, c. 215; 1996, c. 560; 1997, c. 684; 2004, c. 187.

§ 36-55.40. Notes and bonds

A.1. HDA shall have power and is hereby authorized to issue from time to time its negotiable notes and bonds in conformity with applicable provisions of the Uniform Commercial Code in such principal amount as HDA shall determine to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of HDA, establishment of reserves to secure such notes and bonds, and all other expenditures of HDA incident to and necessary or convenient to carry out its corporate purposes and powers. In accordance with § 2.2-5002, such power to issue notes and bonds shall not be restricted or limited solely because the interest on the notes and bonds is subject, in whole or in part, directly or indirectly, to federal income taxes.

2. HDA shall have the power, from time to time, to issue (i) notes to renew notes and (ii) bonds, to pay notes, including the interest thereon and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The refunding bonds may be (i) exchanged for the bonds to be refunded or (ii) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

3. Except as may otherwise be expressly provided by HDA, every issue of its notes and bonds shall be general obligations of HDA payable out of any revenues or moneys of HDA, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

B. The notes and bonds shall be authorized by resolution or resolutions of HDA, shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide, except that no bond shall mature more than fifty years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of HDA may be sold by HDA, at public or private sale, at such price or prices as HDA shall determine.

C. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

1. Pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

2. Pledging all or any part of the assets of HDA, including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

3. The use and disposition of the gross income from mortgages owned by HDA and payment of principal of mortgages owned by HDA;

4. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

5. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

6. Limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

7. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;

8. Limitations on the amount of moneys to be expended by HDA for operating expenses of HDA;

9. Vesting in a trustee or trustees such property, rights, powers and duties in trust as HDA may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter and limiting or abrogating the right of the

bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of such trustee;

10. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of HDA to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the Commonwealth and the other provisions of this chapter;

11. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

D. Any pledge made by HDA shall be valid and binding from the time when the pledge is made; HDA's interest, then existing or thereafter obtained, in the revenues, moneys, mortgage loans, receivables, contract rights or other property or proceeds so pledged shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against HDA, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded, nor shall any filing be required with respect thereto.

E. Neither the commissioners of HDA nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

F. HDA, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of HDA, which shall thereupon be cancelled unless HDA shall provide written notification to the trustee pursuant to subsection J, at a price not exceeding:

1. If the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or

2. If the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

G. In the discretion of HDA, the bonds may be secured by a trust indenture by and between HDA and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the Commonwealth. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of HDA in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. HDA may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the

method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of HDA. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

H. Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the notes and bonds for registration.

I. In case any of the commissioners or officers of HDA whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

J. Notwithstanding any statute or case law to the contrary, the purchase or actual or constructive ownership by HDA of any of its notes or bonds with the intent that such notes or bonds remain outstanding, as evidenced by written notification from HDA to the trustee under the resolution or trust indenture, shall not cause such notes or bonds or the indebtedness evidenced thereby to be canceled or extinguished, subject to such terms and conditions as may be set forth in the written notification and except as may be otherwise provided in the resolution or trust indenture.

1972, c. 830; 1978, c. 189; 1996, c. 298; 1998, c. 442.

§ 36-55.41. Reserve funds and appropriations

A.1. HDA may create and establish one or more special funds (herein referred to as "capital reserve funds"), and shall pay into each such capital reserve fund (i) any moneys appropriated and made available by the Commonwealth for the purpose of such fund, (ii) any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of HDA authorizing the issuance thereof, and (iii) any other moneys which may be made available to HDA for the purpose of such fund from any other source or sources. All moneys held in any capital reserve fund, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of bonds secured in whole or in part by such fund or of the sinking fund payments hereinafter mentioned with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; however, if moneys in any such fund at any time are less than the minimum capital reserve fund requirement established for such fund as hereinafter provided, HDA shall not use such moneys for any optional purchase or redemption of such bonds. Any income or interest earned by, or increment to, any capital reserve fund due to the investment thereof may be transferred by HDA to other funds or accounts of HDA to the extent it does not reduce the amount of such capital reserve fund below the minimum capital reserve fund requirement for such fund;

2. HDA shall not at any time issue bonds, secured in whole or in part by a capital reserve fund, if upon the issuance of such bonds, the amount of such capital reserve fund will be less than the minimum capital reserve fund requirement of such fund, unless HDA, at the time of issuance of such bonds, shall deposit in such fund from the proceeds of the bonds to be issued, or from other sources, an amount which, together with the amount then in such fund, will not be less than the minimum capital reserve fund requirement for such fund. For purposes of this section, the term "minimum capital reserve fund requirement" shall mean, as of any particular date of computation, an amount of money, as provided in the resolutions of HDA authorizing the bonds with respect to which such fund is established, equal to not more than the greatest of the respective amounts, for the current or any future fiscal year of HDA, of annual debt service on the bonds of HDA secured in whole or in part by such fund, such annual debt service for any fiscal year being the amount of money equal to the aggregate of (i) all interest payable during such fiscal year on all bonds secured in whole or in part by such fund outstanding on the date of computation, plus (ii) the principal amount of all such bonds outstanding on said date of computation which mature during such fiscal year, plus (iii) all amounts specified in any resolution of the authority authorizing any of such bonds as payable during such fiscal year as a sinking fund payment with respect to any of such bonds which mature after such fiscal year, all calculated on the assumption that such bonds will after said date of computation cease to be outstanding by reason, but only by reason, of the payment of bonds when due, and the payment when due and application in accordance with the resolution authorizing those bonds, of all of such sinking fund payments payable at or after said date of computation; however, in computing the annual debt service for any fiscal year as aforesaid, bonds deemed to have been paid in accordance with the defeasance provisions of the resolution or resolutions of HDA authorizing the issuance thereof shall not be included in bonds outstanding on the date of computation aforesaid;

3. In computing the amount of any capital reserve funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par or if purchased at less than par, at their cost to HDA;

4. To assure the continued operation and solvency of HDA for the carrying out of its corporate purposes, provision is made in subdivision 1 of this subsection for the accumulation in each capital reserve fund of an amount equal to the minimum capital reserve fund requirement for such fund.

B. In order further to assure the maintenance of the foregoing capital reserve funds, the chairman of HDA shall annually, on or before December 1, make and deliver to the Governor and Director of the Budget his certificate stating the sum, if any, required to restore each such capital reserve fund to the minimum capital reserve fund requirement for such fund. Within five days after the beginning of each session of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of a budget including the sum, if any, required to restore each such capital reserve fund to the minimum capital reserve fund requirement for such fund. All sums appro-

priated by the legislature for such restoration and paid shall be deposited by HDA in the applicable capital reserve fund.

C. HDA shall create and establish such other fund or funds as may be necessary or desirable for its corporate purposes.

D. All amounts paid over to HDA by the Commonwealth pursuant to the provisions of this section shall constitute and be accounted for as advances by the Commonwealth to HDA and, subject to the rights of the holders of any bonds or notes of HDA theretofore or thereafter issued, shall be repaid to the Commonwealth without interest from all available operating revenues of HDA in excess of amounts required for the payment of bonds, notes or other obligations of HDA, the capital reserve funds and operating expenses.

E. The outstanding principal amount of notes and bonds issued by HDA secured by capital reserve funds pursuant to this section, other than notes and bonds for which refunding obligations shall have been issued pursuant to § 36-55.42, shall not exceed $1.5 billion. For the purpose of this subdivision, the outstanding principal amount of notes or bonds issued by HDA at a price less than the face amount thereof shall be deemed to be the issue price of such notes or bonds.

1972, c. 830; 1974, c. 263; 1987, c. 451; 1994, c. 378; 1997, c. 41.

§ 36-55.42. Refunding obligations; issuance

HDA may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any corporate purpose of HDA. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the HDA in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

1972, c. 830.

§ 36-55.43. Same; sale

Refunding obligations issued as provided in § 36-55.42 may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of

America, which proceeds shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

1972, c. 830.

§ 36-55.44. Deposit and investment of moneys of HDA

A. All moneys of HDA except as otherwise authorized or provided in this chapter shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the Commonwealth, in national banking associations, in federal home loan banks, or to the extent then permitted by law, in savings institutions organized under the laws of the Commonwealth of Virginia or the United States. The moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by HDA. Each payment shall be approved by the executive director or such other officers or employees of HDA as HDA shall authorize. Deposits of such moneys shall, if required by HDA, be secured as it shall prescribe, and all banks and trust companies are authorized to give such security for such deposits.

B. Unless otherwise limited by contract with the holders of any of its notes or bonds or with any other parties making loans to HDA, any moneys of HDA and any moneys held in trust or otherwise for the payment of such notes, bonds or loans may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporation, as set forth in § 2.2-4519, (ii) any investments and deposits authorized by Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2, and (iii) any other investments which are permitted pursuant to subsection C for moneys held under any bond resolution or trust indenture of the Authority and which, when acquired by HDA, have, or are general obligations of issuers who have, long-term ratings of at least AA or Aa or the highest short-term ratings, as applicable, by two rating agencies, one of which shall be Moody's Investors Service, Inc., or Standard & Poor's Ratings Group or any successor thereto.

C. In addition to the authorization in subsection B and regardless of any other provisions of law which would otherwise have the effect of limiting the powers set forth in this subsection, HDA shall have power to contract with the holders of any of its notes or bonds and with any other parties making loans to HDA as to the custody, collection, securing, investment and payment of any moneys of HDA and of any moneys held in trust or otherwise for the payment of such notes, bonds or loans, and to carry out such contracts. Unless otherwise specified in such contracts, moneys held in trust or otherwise for the payment of notes, bonds or loans or in any way to secure notes, bonds or loans and deposits of such moneys may be secured in the same manner as set forth in subsection A.

D. Whenever investments are made in accordance with this section, no commissioner or employee of HDA shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part.

1972, c. 830; 1975, c. 536; 1982, cc. 231, 235; 1993, c. 224; 1996, c. 77; 1998, c. 442.

§ 36-55.44:1. Swap agreements by HDA authorized

In connection with, or incidental to, the issuance or carrying of notes or bonds or the acquisition or carrying of any investments, HDA may enter into swap agreements or other contracts or arrangements which HDA determines to be necessary or appropriate to place obligations or investments of HDA, as represented by notes, bonds or investments of HDA, in whole or in part, on the interest rate, currency, cash flow or other basis desired by HDA or to hedge payment, currency, rate, spread, or other exposure. Such contracts or arrangements may be entered into by HDA in connection with, or incidental to, entering into or maintaining (i) any agreement which secures notes or bonds of HDA and is authorized or permitted by law or (ii) any investment, or contract providing for any investment, otherwise authorized or permitted by law.

Such contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by HDA, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.

In connection with, or incidental to, any of these contracts or arrangements, HDA may enter into credit enhancement or liquidity agreements with such terms and conditions as HDA shall determine.

1994, c. 84.

§ 36-55.45. Agreement with Commonwealth

The Commonwealth does hereby pledge to and agree with the holders of any notes or bonds issued under this chapter that the Commonwealth will not limit or alter the rights hereby vested in HDA to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. HDA is authorized to include this pledge and agreement of the Commonwealth in any agreement with the holders of such notes or bonds.

1972, c. 830.

§ 36-55.46. Commonwealth not liable on notes and bonds

The notes, bonds or other obligations of HDA shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall they be payable out of any funds other than those of HDA; and such notes and bonds shall contain on the face thereof a statement to such effect.

1972, c. 830.

§ 36-55.47. Remedies of noteholders and bondholders

(1) In the event that HDA shall default in the payment of principal of or interest on any issue of notes and bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that HDA shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the Circuit Court of the City of Richmond, Commonwealth of Virginia, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his or its own name:

(a) By suit, action or proceeding in accordance with the provisions of Title 8.01, enforce all rights of the noteholders or bondholders, including the right to require HDA to carry out any agreements with such holders and to perform its duties under this chapter;

(b) Bring suit upon such notes or bonds;

(c) By action or suit, require HDA to account as if it were the trustee of an express trust for the holders of such notes or bonds;

(d) By action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;

(e) Declare all such notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five per centum of the principal amount of such notes or bonds then outstanding, annul such declaration and its consequences.

(3) The Circuit Court of the City of Richmond shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any suit, action or proceeding shall be laid in the City of Richmond, Commonwealth of Virginia.

(4) Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to HDA.

1972, c. 830.

§ 36-55.48. Grants from Commonwealth

The Commonwealth may make grants of money or property to HDA for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including, but not limited to, deposits to the reserve funds. This section shall not be construed to limit any other power the Commonwealth may have to make such grants to HDA.

1972, c. 830.

§ 36-55.49. Notes and bonds as legal investments

The notes and bonds of HDA shall be legal investments in which all public officers and public bodies of this Commonwealth, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the Commonwealth, may properly and legally invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivisions of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law including but not limited to security for deposits pursuant to Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 and amendments thereto.

1972, c. 830; 1975, c. 536.

§ 36-55.50. Liberal construction

Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which HDA might otherwise have under any laws of this Commonwealth, and this chapter is cumulative to any such powers. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes and other obligations and refunding bonds under the provisions of this chapter need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations, and contracts for the construction and acquisition of any housing developments undertaken pursuant to this chapter need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state-owned property. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this chapter.

1972, c. 830.

§ 36-55.51. Reports

A. HDA shall submit to the Governor within ninety days after the end of its fiscal year a complete and detailed report setting forth:

(1) Its operations and accomplishments;

(2) Its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by HDA for its operating and capital outlay purposes;

(3) Its assets and liabilities at the end of its fiscal year, including a schedule of its mortgage loans and commitments and the status of reserve, special or other funds; and

(4) A schedule of its notes and bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

B. In order to maintain liaison in development of housing policy, the HDA shall also have the duty of providing reports to the Director of the Department of Housing and Community Development on its policies, objectives, priorities, operations and programs, both present and projected, so as to assist the Director in the formulation of his reports to the Governor and General Assembly regarding housing and community development policies, goals, plans and programs.

1972, c. 830; 1977, c. 613.

§ 36-55.51:1. Annual audit

An annual audit shall be conducted on the accounts of HDA by an independent certified public accountant, and such audit shall be reviewed by the Auditor of Public Accounts. The cost of such audit and review shall be borne by HDA.

1987, c. 451.

§ 36-55.52. Inconsistent provisions in other laws superseded

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

1972, c. 830.

Chapter 1.3 - ALLOCATION FORMULA FOR AUTHORITIES [Repealed]

§§ 36-55.53 through 36-55.62. Repealed

Repealed by Acts 1987, c. 306.

Chapter 1.4 - LOW-INCOME HOUSING CREDIT

§ 36-55.63. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

Chapter 1.5 - HOUSING REHABILITATION ZONES

§ 36-55.64. Creation of local housing rehabilitation zones

A. Any city, county, or town may establish, by ordinance, one or more housing rehabilitation zones for the purpose of providing incentives and regulatory flexibility in such zone.

B. The incentives provided in a housing rehabilitation zone may include, but not be limited to (i) reduction of permit fees, (ii) reduction of user fees, and (iii) waiver of tax liens to facilitate the sale of property that will be substantially renovated, rehabilitated or replaced.

C. Incentives established pursuant to this section may extend for a period of up to 10 years from the date of initial establishment of the housing rehabilitation zone; however, the extent and duration of any incentive shall conform to the requirements of applicable federal and state law.

D. The regulatory flexibility provided in a housing rehabilitation zone may include, but not be limited to (i) special zoning for the district, (ii) the use of a special permit process, (iii) exemption from certain specified ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which shall be binding upon the locality for a period of up to 10 years.

E. The governing body may establish a service district for the provision of additional public services pursuant to Chapter 24 (§ 15.2-2400 et seq.) of Title 15.2.

F. Each locality establishing a housing rehabilitation zone pursuant to this section may also apply for the designation of a housing revitalization zone pursuant to Chapter 11 (§ 36-157 et seq.). Nothing in this chapter shall preclude such dual designation.

G. Any housing rehabilitation zone established pursuant to this chapter shall be deemed to meet the requirements for designation of housing revitalization eligible to be financed as an economically mixed project pursuant to § 36-55.30:2.

H. This section shall not authorize any local government powers that are not expressly granted herein.

2006, c. 711; 2013, cc. 756, 793; 2016, c. 331.

Chapter 2 - DEFENSE HOUSING PROJECTS

§§ 36-56 through 36-64. Repealed

Repealed by Acts 2012, c. 437, cl. 1.

Chapter 3 - HOUSING PROJECTS FOR VETERANS

§§ 36-65 through 36-69. Repealed

Repealed by Acts 2012, c. 437, cl. 1.

Chapter 4 - INDUSTRIALIZED BUILDING SAFETY LAW

§ 36-70. Short title

The short title of the law embraced in this chapter is the Virginia Industrialized Building Safety Law.

Code 1950, § 12-68; 1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.

§ 36-71. Repealed

Repealed by Acts 1986, c. 37.

§ 36-71.1. Definitions

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Board" means the Board of Housing and Community Development.

"Compliance assurance agency" means an architect or professional engineer registered in Virginia, or an organization, determined by the Department to be specially qualified by reason of facilities, personnel, experience and demonstrated reliability, to investigate, test and evaluate industrialized buildings; to list such buildings complying with standards at least equal to those promulgated by the Board; to provide adequate follow-up services at the point of manufacture to ensure that production units are in full compliance; and to provide a label as evidence of compliance on each manufactured section or module.

"Department" means the Department of Housing and Community Development.

"Industrialized building" means a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in § 36-85.3 and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act shall not be considered industrialized buildings for the purpose of this law.

"Registered" means that an industrialized building displays a registration seal issued by the Department of Housing and Community Development.

"The law" or "this law" means the Virginia Industrialized Building Safety Law as provided in this chapter.

1986, c. 37.

§ 36-72. Declaration of policy [Not set out]

Not set out. (1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.)

§ 36-73. Authority of Board to promulgate rules and regulations

The Board shall from time to time promulgate rules and regulations prescribing standards to be complied with in industrialized buildings for protection against the hazards thereof to safety of life, health and property and prescribing procedures for the administration, enforcement and

maintenance of such rules and regulations. The standards shall be reasonable and appropriate to the objectives of this law and within the guiding principles prescribed by the General Assembly in this law and in any other law in pari materia. The standards shall not be applied to manufactured homes defined in § 36-85.3.

In making rules and regulations, the Board shall have due regard for generally accepted safety standards as recommended by nationally recognized organizations, including but not limited to the International Code Council and the National Fire Protection Association.

Where practical, the rules and regulations shall be stated in terms of required levels of performance, so as to facilitate the prompt acceptance of new building materials and methods. Where generally recognized standards of performance are not available, the rules and regulations of the Board shall provide for acceptance of materials and methods whose performance has been found by the Department, on the basis of reliable test and evaluation data presented by the proponent, to be substantially equal in safety to those specified.

Code 1950, § 12-71; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37; 2010, c. 77.

§ 36-74. Notice and hearing on rules and regulations

The Board shall comply with all applicable requirements of the Administrative Process Act (§ 2.2-4000 et seq.) when adopting, amending or repealing any rules or regulations under this law.

Code 1950, § 12-72; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-75. Amendment, etc., and annual review of rules and regulations

The Board may modify, amend or repeal any rules or regulations as the public interest requires.

The Administrator shall make an annual review of the rules and regulations, considering the housing needs and supply in the Commonwealth and factors that tend to impede or might improve the availability of housing for all citizens of the Commonwealth and shall recommend to the Board such modifications, amendments or repeal as deemed necessary.

Code 1950, § 12-73; 1970, c. 305; 1971, Ex. Sess., c. 103; 1975, c. 250; 1977, c. 613; 1979, c. 489; 1986, c. 37.

§ 36-76. Printing and distribution of rules and regulations

The Administrator shall have printed from time to time, and keep in pamphlet form, all rules and regulations prescribing standards for industrialized buildings. Such pamphlets shall be furnished upon request to members of the public.

Code 1950, § 12-74; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-77. Rules and regulations to be kept in office of Administrator

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Administrator, accessible to the public.

Code 1950, § 12-75; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-78. Effective date and application of rules and regulations

No rules or regulations shall be made effective earlier than twelve months after June 26, 1970. No person, firm or corporation shall offer for sale or rental or sell or rent any industrialized buildings which have been constructed after the effective date of such rule or regulation unless it conforms with said rules and regulations. Any industrialized building constructed before the effective date of these regulations shall remain subject to the ordinances, laws or regulations in effect at the time such industrialized building was constructed, but nothing in this chapter shall prevent the enactment or adoption of additional requirements where necessary to provide for adequate safety of life, health and property.

Code 1950, § 12-76; 1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.

§ 36-79. Effect of label of compliance assurance agency

Any industrialized building shall be deemed to comply with the standards of the Board when bearing the label of a compliance assurance agency.

Code 1950, § 12-77; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-80. Modifications to rules and regulations

The Administrator shall have the power upon appeal in specific cases to authorize modifications to the rules and regulations to permit certain specified alternatives where the objectives of this law can be fulfilled by such other means.

Code 1950, § 12-78; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-81. Application of local ordinances; enforcement of chapter by local authorities

Registered industrialized buildings shall be acceptable in all localities as meeting the requirements of this law, which shall supersede the building codes and regulations of the counties, municipalities and state agencies. The local building official is authorized to and shall determine that any unregistered industrialized building shall comply with the provisions of this law. Local requirements affecting industrialized buildings, including zoning, utility connections, preparation of the site, and maintenance of the unit, shall remain in full force and effect. All local building officials are authorized to and shall enforce the provisions of this law, and the rules and regulations made in pursuance thereof.

Code 1950, § 12-79; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-82. Right of entry and examination by Administrator; notice of violation

The Administrator shall have the right, at all reasonable hours, to enter into any industrialized building upon permission of any person who has authority or shares the use, access and control over the building, or upon request of local officials having jurisdiction, for examination as to compliance with the rules and regulations of the Board. Whenever the Administrator shall find any violation of the rules and regulations of the Board, he shall order the person responsible therefor to bring the building into compliance, within a reasonable time, to be fixed in the order.

Code 1950, § 12-80; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-82.1. Appeals

Any person aggrieved by the Department's application of the rules and regulations of the Industrialized Building Safety Law shall be heard by the State Building Code Technical Review Board established by § 36-108. The Technical Review Board shall have the power and duty to render its decision in any such appeal, which decision shall be final if no further appeal is made.

1986, c. 37; 2010, c. 77.

§ 36-83. Violation a Class 1 misdemeanor; penalty

It shall be unlawful for any person, firm or corporation, on or after June 26, 1970, to violate any provisions of this law or the rules and regulations made pursuant hereto. Any person, firm or corporation violating any of the provisions of this law, or the rules and regulations made hereunder, shall be deemed guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000.

Code 1950, § 12-81; 1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.

§ 36-84. Clerical assistants to Administrator; equipment, supplies and quarters

The Administrator may employ such permanent or temporary, clerical, technical and other assistants as is found necessary or advisable for the proper administration of this law, and may fix their compensation and may likewise purchase equipment and supplies deemed necessary.

Code 1950, § 12-82; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-85. Fee for registration seal; use of proceeds

The Board, by rule and regulation, shall establish a fee for each approved registration seal. The proceeds from the sale of such seals shall be used to pay the costs incurred by the Department in the administration of this law.

Code 1950, § 12-83; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§ 36-85.1. Refund of fee paid for registration seal

Any person or corporation having paid the fee for an approved registration seal which it will not use may, unless and except as otherwise specifically provided, within one year from the date of the payment of any such fee, apply to the Administrator for a refund, in whole or in part, of the fee paid; provided that no payment shall be recovered unless the approved registration seal is returned, unused and in good condition, to the Administrator. Such application shall be by notarized letter.

1980, c. 97; 1986, c. 37.

Chapter 4.1 - MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS LAW

§ 36-85.2. Short title

The short title of the law embraced in this chapter is the Virginia Manufactured Housing Construction and Safety Standards Law.

1986, c. 37.

§ 36-85.3. Definitions

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Any person" shall, in addition to referring to a natural person, include any partnership, corporation, joint stock company or any association whether incorporated or unincorporated.

"Board" means the Board of Housing and Community Development.

"Dealer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use for which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Department" means the Department of Housing and Community Development.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"Federal Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 U.S.C. § 5401 et seq.).

"Federal Regulations" means the Federal Manufactured Home Procedural and Enforcement Regulations.

"Federal Standards" means the Federal Manufactured Home Construction and Safety Standards.

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent risk of death or severe personal injury.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and forty body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent found-

ation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

"Manufactured home construction" means all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety.

"Manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against unreasonable risk of the occurrence of accidents due to the design or construction of the home, or any unreasonable risk of death or injury to the user if such accidents do occur.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Secretary" means the Secretary of the United States Department of Housing and Urban Development.

"Skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

"State Administrative Agency" or "SAA" means the Department of Housing and Community Development which is responsible for the administration and enforcement of this law throughout Virginia and of the plan authorized by § 36-85.5.

"The law" or "this law" means the Virginia Manufactured Housing Construction and Safety Standards Law as embraced in this chapter.

1986, c. 37; 1990, c. 593 .

§ 36-85.4. Purpose and application [Not set out]

Not set out. (1986, c. 37.)

§ 36-85.5. Enforcement

The Department of Housing and Community Development is designated as the agency of this State Administrative Agency plan approved by HUD. The Administrator is authorized to perform the following functions:

1. Enforce the Federal Standards with respect to all manufactured homes manufactured in Virginia;

2. Assure that no state or local standard conflicts with those Federal Standards governing manufactured housing construction and performance;

3. Enter and inspect factories, warehouses, or establishments in which manufactured homes are manufactured, stored, or offered for sale as may be required;

4. Seek enforcement of the civil and criminal penalties established by § 36-85.12 of this law;

5. Carry out the notification and correction procedures specified in the Federal Regulations, including holding such hearings and making such determinations as may be necessary and requiring manufacturers in the Commonwealth to provide such notifications and corrections as may be required by the Federal Regulations;

6. Employ such qualified personnel as may be necessary to carry out the approved plan for enforcement and otherwise administer this law;

7. Require manufacturers, distributors, and dealers in the Commonwealth to make reports to the Secretary in the same manner and to the same extent as if such plan were not in effect;

8. Participate, advise, assist, and cooperate with other state, federal, public, and private agencies in carrying out the approved plan for enforcement;

9. Provide for participation by the SAA in any interstate monitoring activities which may be carried out on behalf of HUD;

10. Receive consumer complaints and take such actions on the complaints as may be required by the Federal Regulations;

11. Give satisfactory assurance to HUD that the SAA has and will have the legal authority necessary for enforcement of the Federal Standards;

12. Take such other actions as may be necessary to comply with Federal Regulations and Standards referenced in this law.

1986, c. 37.

§ 36-85.6. Federal Standards and Regulations

The Federal Standards shall be the sole standard applicable regarding design, construction, or safety of any manufactured home as defined by this law. The Administrator shall accept manufactured home plan approvals from state or private agencies authorized by HUD to conduct plan reviews and approvals. The Administrator shall accept certifications of compliance with the Federal Standards for homes manufactured in other states when such certifications are made according to Federal Regulations.

1986, c. 37.

§ 36-85.7. Authority of Board to adopt rules and regulations

The Board shall from time to time adopt, amend, or repeal such rules and regulations as are necessary to implement this law in compliance with the Federal Act and the Federal Standards and Regulations enacted by HUD.

1986, c. 37.

§ 36-85.8. Notice and hearing on rules and regulations

The Board shall comply with all applicable requirements of the Administrative Process Act (§ 2.2-4000 et seq.) when adopting, amending, or repealing any rules and regulations under this law.

1986, c. 37.

§ 36-85.9. Printing and distribution of rules and regulations

The Administrator shall have printed and keep in pamphlet form all rules and regulations prescribing the implementation and enforcement of this law. Such pamphlets shall be furnished to members of the public upon request.

1986, c. 37.

§ 36-85.10. Rules and regulations to be kept in office of Department

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Department, accessible to the public.

1986, c. 37.

§ 36-85.11. Application of local ordinances; enforcement of chapter by local authorities

Manufactured homes displaying the certification label as prescribed by the Federal Standards shall be accepted in all localities as meeting the requirements of this law, which shall supersede the building codes of the counties, municipalities and state agencies. Local zoning ordinances and other land use controls that do not affect the manner of construction or installation of manufactured homes shall remain in full force and effect. Site preparation, utility connections, skirting installation, and maintenance of the manufactured home shall meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.).

Notwithstanding the above, structures meeting the definition of "manufactured home" set forth in § 36-85.3 shall be defined in local zoning ordinances as "manufactured homes." The term "manufactured home" shall be defined in local zoning ordinances solely as it is defined in § 36-85.3.

All local building officials are authorized to and shall enforce the regulations adopted by the Board in accordance with this law.

1986, c. 37; 1988, c. 410; 1990, c. 593 .

§ 36-85.12. Violation; civil and criminal penalties

It shall be unlawful for any person, firm or corporation, to violate any provisions of this law, the rules and regulations enacted under authority of this law, or the Federal Law and Regulations. Any person, firm or corporation violating any provision of said laws, rules and regulations, or any final order issued thereunder, shall be liable for civil penalty not to exceed $1,000 for each violation. Each violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or to perform an act required by the legislation or regulations. The maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

An individual or a director, officer, or agent of a corporation who knowingly and willfully violates Section 610 of the National Manufactured Housing Construction and Safety Standards Act in a manner which threatens the health or safety of any purchaser shall be deemed guilty of a Class 1

misdemeanor and upon conviction fined not more than $1,000 or imprisoned not more than one year, or both.

1986, c. 37.

§ 36-85.13. Staff, equipment or supplies

The Administrator may employ permanent or temporary technical, clerical and other assistants as is necessary or advisable for the proper administration of this law. The Administrator may purchase equipment and supplies deemed necessary for the staff.

1986, c. 37.

§ 36-85.14. Fees

The Board may establish inspection fees to be paid by manufacturers to cover the costs of monitoring inspections. Such fees shall be in the amount and manner as set out in the Federal Regulations. The SAA shall participate in the fee distribution program established by HUD and is authorized to enter into and execute a Cooperative Agreement with HUD for such participation.

1986, c. 37.

§ 36-85.15. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

Chapter 4.2 - MANUFACTURED HOUSING LICENSING AND TRANSACTION RECOVERY FUND LAW

Article 1 - LICENSING OF MANUFACTURED HOUSING INDUSTRY

§ 36-85.16. Definitions

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under this chapter.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code and the Industrialized Building and Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for manufactured homes.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also

means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode, is 8 feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person, resident or nonresident, engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or "salesperson" means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer, broker or manufacturer to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange, or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home that (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer within two years of the date of manufacture, the home is still considered new and must

continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by this chapter to be licensed by the Board.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Substantial identity of interest" means (i) a controlling financial interest by the individual or corporate principals of the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed or (ii) substantially identical principals or officers as the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the Board.

"Supplier" means the original producer of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

1991, c. 555; 1992, c. 223; 1994, c. 671; 2005, c. 430; 2008, c. 350.

§ 36-85.16:1. Certified mail; subsequent mail or notices may be sent by regular mail

Whenever in this chapter the Board, the Director, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board, the Director, or the Department may be sent by regular mail.

2011, c. 566.

§ 36-85.17. Manufactured Housing Board created; membership

A. There is hereby created the Virginia Manufactured Housing Board within the Department of Housing and Community Development. The Board shall be composed of nine members, eight of whom shall be nonlegislative citizen members appointed by the Governor subject to confirmation by the General Assembly and one of whom shall be the Director, who shall serve ex officio. The appointed members shall include two manufactured home manufacturers, two manufactured home dealers, and four members representing the public who have knowledge of the industry.

B. The Board shall elect from its members a chairman and a vice-chairman for terms of two years. The members of the Board shall serve for terms of four years. In the event of any vacancy, the Governor shall appoint a replacement to serve the unexpired term. The ex officio member shall serve a term coincident with his term of office. Meetings shall be held at the call of the chairman or whenever two members so request.

C. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

1991, c. 555; 1992, c. 223; 1995, c. 33; 2016, c. 331.

§ 36-85.18. Powers and duties of Manufactured Housing Board

The Virginia Manufactured Housing Board shall have the following powers and duties:

1. To issue licenses to manufacturers, dealers, brokers, and salespersons;

2. To require that an adequate recovery fund be established for all regulants;

3. To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry;

4. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as are necessary to carry out the provisions of this chapter, including but not limited to the licensure of manufactured home brokers, dealers, manufacturers, and salespersons and the relicensure of manufactured home brokers, dealers, manufacturers, or salespersons after license revocation or nonrenewal;

5. To make case decisions in accordance with the Administrative Process Act as are necessary to carry out the provisions of this chapter; and

6. To levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual per dealer basis, or a combination thereof.

1991, c. 555; 1992, c. 223; 1994, c. 671; 2008, c. 350.

§ 36-85.19. License required; penalty

A. It shall be unlawful and constitute the commission of a Class 1 misdemeanor for any manufactured home manufacturer, dealer, broker, or salesperson to be engaged in business as such in this Commonwealth without first obtaining a license from the Board, as provided in this chapter.

Application for such license shall be made to the Board at such time, in such form, and contain such information as the Board shall require, and shall be accompanied by required fees established by the Board by regulation in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Board shall levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual per dealer basis, or a combination thereof.

In such application, the Board shall require information relating to the matters set forth in § 36-85.20 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All such information shall be considered by the Board in determining the fitness of the applicant to engage in the business for which the license is sought.

All licenses that are granted shall expire, unless revoked or suspended, on the annual anniversary of the date of issuance.

Every regulant under this chapter shall obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee. Upon failure to renew, the license shall automatically expire. Such license may be renewed upon payment of the prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, broker, or salesperson after expiration of the license and is otherwise eligible for a license under the provisions of this chapter.

Special licenses, not to exceed ten days in duration, may be issued for each temporary place of business, operated or proposed by the regulant, that is not contiguous to other premises for which a license is issued. The fee for a special license shall be established by the Board, provided that no such license shall be required for a place of business operated by a regulant that is used exclusively for storage.

B. Notwithstanding any other provisions of this chapter, the Board may provide by regulation that a manufactured home salesperson will be allowed to engage in business during the time period after applying for a license but before such license is granted.

1991, c. 555; 1992, c. 223; 1994, c. 671.

§ 36-85.20. Grounds for denying, suspending or revoking license

A. A license may be denied, suspended, or revoked by the Board on any one or more of the following grounds:

1. Material misstatement in application for license;

2. Failure to pay required assessment to the Manufactured Housing Recovery Fund;

3. Engaging in the business of a manufactured home manufacturer, dealer, broker, or salesperson without first obtaining a license from the Board;

4. Failure to comply with the warranty service obligations and claims procedure established by this chapter;

5. Failure to comply with the set-up and tie-down requirements of the Code;

6. Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into the regulant's possession arising from the sale of manufactured homes;

7. Use of unfair methods of competition or unfair or deceptive commercial acts or practices;

8. Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this chapter;

9. Employing unlicensed retail salespersons;

10. Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this chapter or selling to dealers not licensed pursuant to this chapter manufactured homes which are to be sold in the Commonwealth to buyers as defined in this chapter;

11. Having had a license revoked, suspended, or denied by the Board under this chapter; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this Commonwealth, would have been a violation under this chapter;

12. Defrauding any buyer, to the buyer's damage, or any other person in the conduct of the regulant's business; or

13. Failure to comply with any provisions of this chapter.

B. The Board may revoke or deny renewal of an existing license or refuse to issue a license to any manufactured home broker, dealer, manufacturer or salesperson who is shown to have a substantial identity of interest with a manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the Board.

C. Any person whose license is revoked or not renewed by the Board shall not be eligible for a license under any circumstances or under any name, except as provided by regulations of the Board pursuant to § 36-85.18.

1991, c. 555; 1992, c. 223; 2008, c. 350.

§ 36-85.21. Notice and hearing

The Board shall not suspend, revoke, or deny a license or refuse the renewal of a license, or impose a civil penalty, until a written notice of the complaint has been furnished to the regulant or applicant against whom the same is directed, and a hearing thereon has been held before the Board. Reasonable written notice of the time and place of the hearing shall be given to the regulant or applicant by certified mail to his last known address, as shown on the license or other record of information in possession of the Board. At any such hearing, the regulant or applicant

shall have the right to be heard in person or through counsel. After the hearing, the Board shall have the power to deny, suspend, revoke or refuse to renew the license in question for violation of the provisions of this chapter. Immediate notice of any such action by the Board shall be given to the regulant or applicant in the same manner as provided herein for furnishing notice of hearing.

In the event of a conflict between the provisions of this section and the Administrative Process Act (§ 2.2-4000 et seq.), the provisions of the Administrative Process Act shall govern.

1991, c. 555; 1992, c. 223 .

§ 36-85.22. Set-up requirements; effect on insurance policies

Manufactured homes shall be set-up in accordance with the Code.

In the event that a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage of a nature that indicated the manufactured home was not set-up in the manner required by this section, the insurer issuing the homeowner's insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the manufactured home was not properly set-up.

1991, c. 555; 1992, c. 223 .

§ 36-85.23. Warranties

Each manufacturer, dealer, and supplier of manufactured homes shall warrant each new manufactured home sold in this Commonwealth, and the dealer shall warrant the set-up of each manufactured home if performed by or contracted for by the dealer, in accordance with the warranty requirements prescribed by this section for a period of at least twelve months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, and supplier are as follows:

1. The manufacturer warrants that all structural elements, plumbing systems, heating, cooling (if any), and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from defect.

2. The dealer warrants:

a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from defects. Alterations or modifications made by the dealer, without written permission of the manufacturer, shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any damage resulting therefrom.

b. That set-up operations performed by the dealer or by persons under contract to the dealer on the manufactured home are accomplished in compliance with the applicable Code standards for installation of manufactured homes.

c. That during the course of set-up and transportation of the manufactured home performed by the dealer or by persons under contract to the dealer, defects do not occur to the manufactured home.

3. The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

1991, c. 555; 1992, c. 223 .

§ 36-85.24. Presenting claims for warranties and defects

Whenever a claim for a warranty service or about a defect is made to a regulant, it shall be handled as provided by this chapter. A record shall be made of the name and address of each claimant and the date, substance, and disposition of each claim about a defect. The regulant may request that a claim be made in writing, but nevertheless shall record it as provided above, and may not delay service pending receipt of the written claim.

When the regulant notified is not the responsible party, he shall, in writing, immediately notify the claimant of that fact, and shall also, in writing, immediately notify the responsible party of the claim. When a responsible party is asked to remedy defects, such party may not fail to remedy those defects because another responsible party may also be responsible. Nothing herein shall prevent a responsible party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

Within the time limits provided in this chapter, the regulant shall either resolve the claim or determine that it is not justified. At any time a regulant determines that a claim for service is not justified in whole or part, he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board. The complete mailing address of the Board shall be provided in the notice. Within five working days of receipt of a complaint, the Board shall send a complete copy thereof to the Director.

1991, c. 555; 1992, c. 223 .

§ 36-85.25. Warranty service

When a service agreement exists between or among a manufacturer, dealer, and supplier to provide warranty service, the agreement shall specify which such responsible party is to remedy warranty defects. Every such service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided in this chapter, of responsibility to perform warranty service. However, any responsible party undertaking such an agreement to perform the warranty service obligations of another shall thereby become responsible both to that other responsible party and to the buyer for his failure to adequately perform as agreed.

When no service agreement exists for warranty service, the responsible party as designated by the provisions of this chapter is responsible for remedying the warranty defects.

A defect shall be remedied within forty-five days of receipt of the written notification of the warranty claim, unless the claim is unreasonable or a bona fide reason exists for not remedying the defect within the forty-five-day period. The responsible party shall respond to the claimant in

writing with a copy to the Board stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this section, defects which constitute an imminent safety hazard to life and health shall be remedied within three days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock or leaking gas; or (iv) major structural failure. The Board may suspend this three-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

When the person remedying the defect is not the responsible party as designated by the provisions of this chapter, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct which coerces or requires a nonresponsible party to perform warranty service is a violation of this chapter.

Warranty service shall be performed at the site at which the manufactured home is initially delivered to the buyer, except for components which can be removed for service without undue inconvenience to the buyer.

Any responsible party shall have the right to complain to the Board when warranty service obligations under this chapter are not being enforced.

1991, c. 555; 1992, c. 223 .

§ 36-85.26. Dealer alterations

A. No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this chapter or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection D. An unauthorized alteration or modification performed by a dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

B. An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alterations or modifications. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in the manufacturer being responsible for the warranty.

C. The Board is authorized to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which define the alterations or modifications which must be made by qualified personnel in accordance with the applicable standards of the Code. The Board may

require qualified personnel for those alterations and modifications which could impair the structural integrity or safety of the manufactured home.

D. In order to be designated as a person qualified to alter or modify a manufactured home, a person shall comply with state licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

1991, c. 555; 1992, c. 223 .

§ 36-85.27. Determining length of manufactured homes

In any advertisement or other communication regarding the length of a manufactured home, a regulant shall not include the length of the towing assembly (hitch) in describing the length of the home.

1991, c. 555; 1992, c. 223 .

§ 36-85.28. Limitation on damages; disclosure to buyer

A. If a buyer fails to accept delivery of a manufactured home, the manufactured home dealer may retain actual damages according to the following terms:

1. If the manufactured home is a single section unit and is in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be $1,000.

2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be $2,000.

3. If the manufactured home is larger than a single section unit in the dealer's stock and is not specially ordered for the buyer, the maximum retention shall be $4,000.

4. If the manufactured home is larger than a single section unit and is specially ordered for the buyer from the manufacturer, the maximum retention shall be $7,000.

B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer, as listed in subsection A, for failure to take delivery of the manufactured home as purchased.

1991, c. 555; 1992, c. 223; 2009, cc. 141, 579; 2010, c. 167.

§ 36-85.29. Inspection of service records

The Board is authorized to inspect the pertinent service records of a manufacturer, dealer, supplier, or broker relating to a written warranty claim or complaint made to the Board against such manufacturer, dealer, supplier, or broker. Every regulant shall send to the Board upon request and within ten days, a true copy of every document or record pertinent to any complaint or claim for service.

1991, c. 555; 1992, c. 223 .

§ 36-85.30. Other remedies not excluded

Nothing in this chapter, nor any decision by the Board, shall limit any right or remedy available to the buyer through common law or under any other statute.

1991, c. 555; 1992, c. 223 .

Article 2 - VIRGINIA MANUFACTURED HOUSING TRANSACTION RECOVERY FUND

§ 36-85.31. Recovery fund to be established

A. Each manufactured home manufacturer, dealer, broker and salesperson operating in the Commonwealth of Virginia shall be required to pay an initial assessment fee as set forth in subsection B to the Virginia Manufactured Housing Transaction Recovery Fund. Thereafter, assessment fees shall be assessed as necessary to achieve and maintain a minimum fund balance of $250,000.

B. Each applicant approved by the Board for a license as a manufactured home manufacturer, dealer, broker, or salesperson in accordance with the provisions of Article 1 (§ 36-85.16 et seq.) of this chapter shall pay into the fund the following assessment fees:

1. For a manufacturer -- $4,000 for each separate manufacturing facility payable in one installment or $4,400 payable at $2,200 per year for two years.

2. For a dealer -- $500 per retail location.

3. For a broker -- $500 per sales office.

4. For a salesperson -- $50 per individual.

C. All assessment fees collected under this article shall be deposited in the state treasury and the State Treasurer shall credit the amount paid into a special revenue fund from which appropriations may be utilized by the Board in accordance with the express purposes set forth in this article. The assets of the fund shall be invested in accordance with the advice of the State Treasurer. Interest earned on deposits constituting this fund shall accrue to the fund or may be used for the purposes of providing educational programs to the consumer about manufactured housing.

1991, c. 555; 1992, c. 223; 2009, cc. 141, 579.

§ 36-85.32. Recovery from fund generally

Any person who suffers any loss or damage by any act of a regulant that constitutes a violation of this chapter shall have the right to institute an action to recover from the recovery fund.

Upon a finding by the Board that a violation has occurred, the Board shall direct the responsible manufacturer, dealer, broker, or salesperson to pay the awarded amount to the claimant. If such amount is not paid within thirty days following receipt of the written decision of the Board and no appeal has been filed in court, the Board shall, upon request of the claimant, pay from the recovery fund the amount of the award to the claimant provided that:

1. The maximum claim of one claimant against the fund because of a single or multiple violations by one or more regulants shall be limited to $40,000;

2. The fund balance is sufficient to pay the award;

3. The claimant has assigned the Board all rights and claims against the regulant; and

4. The claimant agrees to subrogate to the Board all rights of the claimant to the extent of payment.

The aggregate of claims against the fund for violations by any one regulant shall be limited by the Board to $75,000 per manufacturer, $35,000 per dealer, $35,000 per broker, and $25,000 per salesperson during any license period. If a claim has been made against the fund, and the Board has reason to believe there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payments from the fund involving such regulant for a period of not more than one year from the date on which the claimant is approved by the Board for an award from the fund. After this one-year period, if the aggregate of claims against the regulant exceeds the above limitations, said amount shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their awards remaining unpaid.

The amount of damages awarded by the Board shall be limited to actual, compensatory damages and shall not include attorney's fees for representation before the Board.

1991, c. 555; 1992, c. 223; 1994, c. 671; 2009, cc. 141, 579.

§ 36-85.33. Revocation of license upon payment from fund

Upon payment to a claimant from the fund, the Board shall immediately revoke the license of the regulant whose conduct resulted in this payment. Any regulant whose license is revoked shall not be eligible to apply for a license under this chapter until the regulant has repaid in full the amount paid from the fund on his account, plus interest.

1991, c. 555; 1992, c. 223 .

§ 36-85.34. Disciplinary action by Board

The Board may take disciplinary action against any regulant for any violation of this chapter or the regulations of the Board. Full repayment of the amount paid from the fund on a regulant's account shall not nullify or modify the effect of any disciplinary proceeding against that regulant for any violation.

1991, c. 555; 1992, c. 223 .

§ 36-85.35. Appeals from decision of the Board

Appeals from a decision of the Board shall be to a circuit court with jurisdiction in the Commonwealth. An appeal must be made within thirty days of the date of the Board's order. Once made, an appeal shall stay the Board's order. Neither the regulant nor the Board shall be required to pay damages to the claimant until such time as a final order of the court is issued. The court

may award reasonable attorney's fees and court costs to be paid by the recovery fund. Except as provided to the contrary herein, appeals pursuant to this section shall be in conformance with the Administrative Process Act (§ 2.2-4000 et seq.).

1991, c. 555; 1992, c. 223 .

§ 36-85.36. Recovery fund administrative regulations

The Board is authorized to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) consistent with this chapter for the administration of the fund to assure the satisfaction of claims.

1991, c. 555; 1992, c. 223 .

Chapter 5 - VIRGINIA FAIR HOUSING LAW [Repealed]

§§ 36-86 through 36-96. Repealed

Repealed by Acts 1991, c. 557 .

Chapter 5.1 - VIRGINIA FAIR HOUSING LAW

§ 36-96.1. Declaration of policy

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

1972, c. 591, §§ 36-86, 36-87; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557 .

§ 36-96.1:1. Definitions

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under §§ 36-96.3, 36-96.4, 36-96.5, or § 36-96.6.

"Dwelling" means any building, structure, or portion thereof, that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of, or addiction to a controlled substance as defined in Virginia or federal law. Neither the term "individual with handicap" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

"Lending institution" includes any bank, savings institution, credit union, insurance company or mortgage lender.

"Person" means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Respondent" means any person or other entity alleged to have violated the provisions of this chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined pursuant to the provisions of § 36-96.9.

"Restrictive covenant" means any specification in any instrument affecting title to real property that purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, or handicap.

"To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

1972, c. 591, § 36-87; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557; 1992, c. 322; 1996, c. 77; 2003, c. 575.

§ 36-96.2. Exemptions

A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6, this chapter shall not apply to any single-family house sold or rented by an owner, provided that such private individual does not own more than three single-family houses at any one time. In the case of the sale of any single-family house by a private individual-owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall apply only with respect to one such sale within any 24-month period; provided that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be exempt from the application of this chapter only if the house is sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the licensee is acting in his personal or professional capacity.

B. Except for subdivision A 3 of § 36-96.3, this chapter shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

C. Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, or handicap. Nor shall anything in this chapter apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its

members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this chapter be construed to prohibit any private, state-owned or state-supported educational institution, hospital, nursing home, religious or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

D. Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.

E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

F. A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.

G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits the rental application or similar document from requiring information concerning the number, ages, sex and familial relationship of the applicants and the dwelling's intended occupants.

1972, c. 591, §§ 36-87, 36-92; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557; 1992, c. 322; 2003, c. 575; 2006, c. 693.

§ 36-96.3. Unlawful discriminatory housing practices

A. It shall be an unlawful discriminatory housing practice for any person:

1. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, or familial status;

2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, or familial status;

3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, or handicap. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer. However, reference alone to places of worship including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;

4. To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

5. To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, or handicap;

6. To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, or handicap or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;

7. To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, or handicap;

8. To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter, (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or (iii) any person associated with the buyer or renter;

9. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i) that person, (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available, or (iii) any person associated with that buyer or renter.

B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

1. The public use and common use areas of the dwellings are readily accessible to and usable by handicapped persons;

2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

3. All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

C. Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people shall be deemed to satisfy the requirements of subdivision B 3.

D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation which requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

1972, c. 591, § 36-88; 1973, c. 358; 1978, c. 138; 1984, c. 685; 1985, c. 344; 1989, c. 88; 1991, c. 557; 1992, c. 322; 1996, c. 327.

§ 36-96.4. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions

A. It shall be unlawful for any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, or in the manner of providing such a transaction, because of race, color, religion, national

origin, sex, elderliness, familial status, or handicap. It shall not be unlawful, however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.

B. As used in this section, the term "residential real estate-related transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling or (ii) secured by residential real estate; or

2. The selling, brokering, insuring or appraising of residential real property. However, nothing in this chapter shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, or handicap.

C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be deposited any public funds in any lending institution provided for herein which is found to be committing discriminatory practices, where such findings were upheld by any court of competent jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited in any lending institution which is practicing discrimination, as set forth herein, shall take immediate steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of sound economic management, this action will result in a financial loss to the Commonwealth or any of its political subdivisions, the action may be deferred for a period not longer than one year. If the lending institution in question has corrected its discriminatory practices, any prohibition set forth in this section shall not apply.

1972, c. 591, § 36-90; 1973, c. 358; 1989, c. 88; 1991, c. 557 .

§ 36-96.5. Interference with enjoyment of rights of others under this chapter

It shall be an unlawful discriminatory housing practice for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

1972, c. 591, § 36-93; 1973, c. 358; 1991, c. 557 .

§ 36-96.6. Certain restrictive covenants void; instruments containing such covenants

A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, or handicap, whether heretofore or hereafter included in an instrument affecting

the title to real or leasehold property, are declared to be void and contrary to the public policy of the Commonwealth.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.

C. No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection A. Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or $500, plus reasonable attorneys' fees and costs incurred.

D. A family care home, foster home, or group home in which individuals with physical handicaps, mental illness, intellectual disability, or developmental disability reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

1972, c. 591, § 36-91; 1973, c. 358; 1986, c. 574; 1989, c. 88; 1991, c. 557; 1998, c. 873; 2012, cc. 476, 507.

§ 36-96.7. Familial status protection not applicable to housing for older persons

A. Nothing in this chapter regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this section, "housing for older persons" means housing: (i) provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or (ii) intended for, and solely occupied by, persons sixty-two years of age or older; or (iii) intended for, and solely occupied by, at least one person fifty-five years of age or older per unit. The following criteria shall be met in determining whether housing qualifies as housing for older persons under clause (iii) of this subsection:

1. At least eighty percent of the occupied units are occupied by at least one person fifty-five years of age or older per unit; and

2. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

B. Housing shall not fail to meet the requirements for housing for older persons by reason of:

1. Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of clauses (ii) and (iii) of subsection A, provided that new occupants of such housing meet the age requirements of those clauses; or

2. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the provisions of clauses (ii) and (iii) of subsection A.

1991, c. 557; 1992, c. 322; 2000, c. 30.

§ 36-96.8. Powers of Real Estate Board and Fair Housing Board

A. The Real Estate Board and the Fair Housing Board, as provided in this chapter, have the power for the purposes of this chapter to initiate and receive complaints, conduct investigations of any violation of this chapter, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge and refer it to the Attorney General for action.

B. The Real Estate Board and the Fair Housing Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.

1972, c. 591, § 36-94; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 2003, c. 575.

§ 36-96.9. Procedures for receipt or initiation of complaint; notice to parties; filing of answer

A. A complaint under § 36-96.8 shall be filed with the Board in writing within one year after the alleged discriminatory housing practice occurred or terminated.

B. Any person not named in the complaint and who is identified as a respondent in the course of the investigation may be joined as an additional or substitute respondent upon written notice to such person by the Board explaining the basis for the Board's belief that such person is properly joined as a respondent.

C. Any respondent may file an answer to a complaint. Complaints and answers must be made in writing, under oath or affirmation, and in such form as the Board requires. Complaints and answers may be reasonably and fairly amended at any time.

D. Upon the filing of a complaint or initiation of a complaint by the Board or its designee, the Board shall provide written notice to the parties as follows:

1. To the aggrieved person acknowledging the filing and advising such person of the time limits and choice of forums under this chapter; and

2. To the respondent, not later than ten days after such filing or the identification of an additional respondent under subsection B, identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this chapter with a copy of the original complaint and copies of any supporting documentation referenced in the complaint.

1991, c. 557 .

§ 36-96.10. Procedures for investigation

A. The Board shall commence proceedings with respect to a complaint within thirty days after receipt of the complaint, and shall complete the investigation within 100 days thereof unless it is impracticable to do so. If the Board is unable to complete the investigation within 100 days after the receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons for not doing so.

B. When conducting an investigation of a complaint filed under this chapter, the Board shall have the right to interview any person who may have any information which may further its investigation and to request production of any records or documents for inspection and copying in the possession of any person which may further the investigation. Such persons shall be interviewed under oath. The Board or its designated subordinates shall have the power to issue and serve a subpoena to any such person to appear and testify and to produce any such records or documents for inspection and copying. Said subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served as part of a civil action in the Commonwealth of Virginia. In case of refusal or neglect to obey a subpoena, the Board may petition for its enforcement in the Circuit Court for the City of Richmond. The hearing on such petition shall be given priority on the court docket over all cases which are not otherwise given priority on the court docket by law.

C. At the end of each investigation under this section, the Board shall prepare a final investigative report containing:

1. The names and dates of contacts with witnesses;

2. A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

3. A summary description of other pertinent records;

4. A summary of witness statements; and

5. Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

D. The Board shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Board's investigation, information derived from an investigation and any final investigative report relating to that investigation.

1975, c. 566, § 36-94.1; 1991, c. 557; 1998, c. 634.

§ 36-96.11. Reasonable cause determination and effect

The Board shall, within 100 days after the filing of a complaint, determine, based on the facts and after consultation with the Office of the Attorney General, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or unless the Board has approved a conciliation agreement with respect to the

complaint. If the Board is unable to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur within 100 days after receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons therefor.

1991, c. 557; 1998, c. 634.

§ 36-96.12. No reasonable cause determination and effect

If the Board determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Board shall promptly dismiss the complaint notifying the parties within thirty days of such determination. The Board shall make public disclosure of each dismissal.

1991, c. 557 .

§ 36-96.13. Conciliation

During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Board, the Board shall, to the extent feasible, engage in conciliation with respect to such complaint.

A. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Board.

B. A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

C. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Board determines that disclosure is not required to further the purposes of this chapter.

D. Whenever the Board has reasonable cause to believe that a respondent has breached a conciliation agreement, the Board may refer the matter to the Attorney General with a recommendation that a civil action be filed under § 36-96.17 for the enforcement of such agreement.

1991, c. 557; 1992, c. 322 .

§ 36-96.14. Issuance of a charge

Upon failure to resolve a complaint by conciliation and after consultation with the Office of the Attorney General, the Board shall issue a charge on behalf of the aggrieved person or persons and shall immediately refer the charge to the Attorney General, who shall proceed with the charge as directed by § 36-96.16. The Board may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

1. Such charge:

a. Shall consist of a short and plain statement of the facts upon which the Board has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

b. Shall be based on the final investigative report; and

c. Need not be limited to the acts or grounds alleged in the complaint filed under § 36-96.9.

2. After the Board issues a charge under this section, the Board shall cause a copy thereof to be served on each respondent named in such charge and on each aggrieved person on whose behalf the complaint was filed.

1991, c. 557 .

§ 36-96.15. Prompt judicial action

If the Board concludes at any time following the filing of a complaint and after consultation with the Office of the Attorney General, that prompt judicial action is necessary to carry out the purposes of this chapter, the Board may authorize a civil action by the Attorney General for appropriate temporary or preliminary relief. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Virginia Rules of Civil Procedure. The commencement of a civil action under this section shall not affect the initiation or continuation of administrative proceedings by the Board under § 36-96.8.

1991, c. 557 .

§ 36-96.16. Civil action by Attorney General upon referral of charge by the Real Estate Board

A. Not later than thirty days after a charge is referred by the Board to the Attorney General under § 36-96.14, the Attorney General shall commence and maintain a civil action seeking relief on behalf of the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.

B. Any aggrieved person with respect to the issues to be determined in a civil action pursuant to subsection A may intervene as of right.

C. In a civil action under this section, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant, as relief, any relief which a court could grant with respect to such discriminatory housing practice in a civil action under § 36-96.18. Any relief so granted that would accrue to an aggrieved person under § 36-96.18 shall also accrue to the aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action brought under this section.

D. In any court proceeding arising under this section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

1991, c. 557; 1994, c. 814.

§ 36-96.17. Civil action by Attorney General; matters involving the legality of any local zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement for enforcement

A. If the Board determines, after consultation with the Office of the Attorney General, that an alleged discriminatory housing practice involves the legality of any local zoning or land use ordinance, instead of issuing a charge, the Board shall immediately refer the matter to the Attorney General for civil action in the appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

B. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in the appropriate circuit court for appropriate relief.

C. In the event of a breach of a conciliation agreement by a respondent, the Board may authorize a civil action by the Attorney General. The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of ninety days after the referral of such alleged breach.

D. The Attorney General, on behalf of the Board, or other party at whose request a subpoena is issued, under this chapter, may enforce such subpoena in appropriate proceedings in the appropriate circuit court.

E. In a civil action under subsections A, B, and C, the court may:

1. Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as is necessary to assure the full enjoyment of the rights granted by this chapter.

2. Assess a civil penalty against the respondent (i) in an amount not exceeding $50,000 for a first violation; and (ii) in an amount not exceeding $100,000 for any subsequent violation.

3. Award the prevailing party reasonable attorney's fees and costs. The Commonwealth shall be liable for such fees and costs to the extent provided by the Code of Virginia.

The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.

F. Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection A, B or C which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a party to a conciliation agreement.

The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under § 36-96.18.

1991, c. 557; 1994, c. 814.

§ 36-96.18. Civil action; enforcement by private parties

A. An aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

B. An aggrieved person may commence a civil action under § 36-96.18 A no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, whichever is later. This subsection shall not apply to actions arising from a breach of a conciliation agreement. An aggrieved person may commence a civil action under this section whether or not a complaint has been filed under § 36-96.9 and without regard to the status of any such complaint. If the Board or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

C. In a civil action under subsection A, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive damages, without limitation otherwise imposed by state law, and the court may award reasonable attorney's fees and costs, and subject to subsection D, may grant as relief, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate.

D. Relief granted under subsection C shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer or tenant, without actual notice of the filing of a complaint with the Board or civil action under this chapter.

E. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon intervention, the Attorney General may obtain such relief as would be available to the private party under subsection C.

1972, c. 591, § 36-94; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 1994, c. 814.

§ 36-96.19. Witness fees

Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Board.

1991, c. 557 .

§ 36-96.20. Additional powers of the Real Estate Board; action on real estate licenses

A. In any case in which the Board has received or initiated a complaint and conducted an investigation of any violation of this chapter and determined that there exists reasonable cause to believe that a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees have engaged in discriminatory housing practices prohibited by the Virginia Fair Housing Law (§ 36-96.1 et seq.) or Chapter 5 (§ 6.2-500 et seq.) of Title 6.2, the Board shall immediately attempt to resolve the matter by conference and conciliation, and upon failure to resolve the matter in such manner, may initiate an administrative hearing to determine whether to revoke, suspend or fail to renew the license or licenses in question. Not less than 10 days prior to the initial conference hereunder, the Board shall prepare and deliver to the respondent or respondents a written report setting forth the scope, findings and conclusions of the investigation conducted under this section.

B. If any person operating under a real estate license issued by the Board, pursuant to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, is found by a court to have violated any provision of this chapter and this fact is so certified to the Board, the Board, after notification to the licensee, shall take appropriate action to consider suspension or revocation of the license of the licensee.

1972, c. 591, §§ 36-94, 36-95.2; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 1992, c. 84; 2003, c. 575; 2010, c. 794.

§ 36-96.21. Powers of counties, cities and towns

A. Any county, city or town which has any ordinance in effect on January 1, 1991, enacted under the Virginia Fair Housing Law (§ 36-86 et seq.), the Virginia Human Rights Act (§ 2.2-3900 et seq.), or any other applicable state law may continue to enforce such ordinance and may amend the ordinance, provided the amendment is not inconsistent with this chapter. Nothing herein shall be construed to prohibit any county, city or town under this subsection from submitting amended ordinances to the U.S. Department of Housing and Urban Development for substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

B. The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter provided that (i) such ordinances conform to this chapter and are enacted prior to September 30, 1992, and (ii) such amended ordinances are submitted to the U.S. Department of Housing and Urban Development for a determination of substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

1972, c. 591, § 36-96; 1975, c. 345; 1982, c. 113; 1991, c. 557; 1996, cc. 173, 369.

§ 36-96.22. Repealed

Repealed by Acts 2015, c. 709, cl. 2

§ 36-96.23. Construction of law

Nothing in this chapter shall abridge the federal Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.) as amended.

1991, c. 557 .

Chapter 6 - UNIFORM STATEWIDE BUILDING CODE

Article 1 - GENERAL PROVISIONS

§ 36-97. Definitions

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

"Board" means the Board of Housing and Community Development.

"Review Board" means the State Building Code Technical Review Board.

"Building Code" means the Uniform Statewide Building Code and building regulations adopted and promulgated pursuant thereto.

"Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

"Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

"Municipality" means any city or town in this Commonwealth.

"Local governing body" means the governing body of any city, county or town in this Commonwealth.

"Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of the Building Code and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents.

"State agency" means any state department, board, bureau, commission, or agency of this Commonwealth.

"Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Building" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

"Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

"Farm building or structure" means a building or structure not used for residential purposes, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm;

2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products;

3. Business or office uses relating to the farm operations;

4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm;

5. Storage or use of supplies and materials used on the farm; or

6. Implementation of best management practices associated with farm operations.

"Construction" means the construction, reconstruction, alteration, repair or conversion of buildings and structures.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building or structure.

"Director" means the Director of the Department of Housing and Community Development.

"Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Structure" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be

governed by construction and design standards approved by the Commonwealth Transportation Board.

"Department" means the Department of Housing and Community Development.

1972, c. 829; 1974, cc. 622, 668; 1975, c. 394; 1977, cc. 423, 613; 1978, c. 703; 1986, c. 401; 1993, c. 662; 1994, c. 256; 1998, c. 755; 2005, c. 341.

§ 36-98. Board to promulgate Statewide Code; other codes and regulations superseded; exceptions

The Board is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. Such building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

However, such Code shall not supersede the regulations of other state agencies which require and govern the functional design and operation of building related activities not covered by the Uniform Statewide Building Code including but not limited to (i) public water supply systems, (ii) waste water treatment and disposal systems, and (iii) solid waste facilities. Nor shall state agencies be prevented from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance with provisions of the Uniform Statewide Building Code.

Such Code also shall supersede the provisions of local ordinances applicable to single-family residential construction that (a) regulate dwelling foundations or crawl spaces, (b) require the use of specific building materials or finishes in construction, or (c) require minimum surface area or numbers of windows; however, such Code shall not supersede proffered conditions accepted as a part of a rezoning application, conditions imposed upon the grant of special exceptions, special or conditional use permits or variances, conditions imposed upon a clustering of single-family homes and preservation of open space development through standards, conditions, and criteria established by a locality pursuant to subdivision 8 of § 15.2-2242 or § 15.2-2286.1, or land use requirements in airport or highway overlay districts, or historic districts created pursuant to § 15.2-2306, or local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

1972, c. 829; 1977, c. 613; 1979, c. 718; 1980, c. 104; 1982, c. 267; 2001, c. 525; 2002, c. 703; 2006, c. 903.

§ 36-98.01. Mechanics' lien agent included on building permit for residential property at request of applicant

In addition to any information required by the Uniform Statewide Building Code, a building permit issued for any one- or two-family residential dwelling unit shall at the time of issuance contain, at the request of the applicant, the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1. If the designation of a mechanics' lien agent is not so requested by the applicant, the building permit shall at the time of issuance state that none has been designated with the words "None Designated."

1992, cc. 779, 787 .

§ 36-98.1. State buildings; exception for certain assets owned by the Department of Transportation

A. The Building Code shall be applicable to all state-owned buildings and structures, and to all buildings and structures built on state-owned property, with the exception that §§ 2.2-1159 through 2.2-1161 shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

Any state-owned building or structure, or building or structure built on state-owned property, for which preliminary plans were prepared or on which construction commenced after the initial effective date of the Uniform Statewide Building Code, shall remain subject to the provisions of the Uniform Statewide Building Code that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of the Building Code.

Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for any state-owned buildings or structures and for all buildings and structures built on state-owned property. The Department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It may provide for the (i) inspection of state-owned buildings or structures and for all buildings and structures built on state-owned property and (ii) enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the Department of General Services. The Department of General Services may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Department of General Services shall provide the local building department with a written summary of its reasons for doing so.

B. Notwithstanding the provisions of subsection A and § 27-99, roadway tunnels and bridges owned by the Department of Transportation shall be exempt from the Building Code and the Statewide Fire Prevention Code Act (§ 27-94 et seq.). The Department of General Services shall not have jurisdiction over such roadway tunnels, bridges, and other limited access highways; provided, however, that the Department of General Services shall have jurisdiction over any occupied buildings within any Department of Transportation rights-of-way that are subject to the Building Code.

Roadway tunnels and bridges shall be designed, constructed, and operated to comply with fire safety standards based on nationally recognized model codes and standards to be developed by the Department of Transportation in consultation with the State Fire Marshal. Emergency response planning and activities related to the standards shall be developed by the Department of Transportation and coordinated with the appropriate local officials and emergency services providers. On an annual basis the Department of Transportation shall provide a report on the maintenance and operability of installed fire protection and detection systems in roadway tunnels and bridges to the State Fire Marshal.

C. (Effective until October 1, 2016) Except as provided in subsection D of § 23-38.109, and notwithstanding the provisions of subsection A, at the request of a public institution of higher education, the Department, as further set forth in this subsection, shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.). The Department shall publish administrative procedures that shall be followed in contracting with a building official of the locality. The authority granted to a public institution of higher education under this subsection to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88.

C. (Effective October 1, 2016) Except as provided in subsection E of § 23.1-1016, and notwithstanding the provisions of subsection A, at the request of a public institution of higher education, the Department, as further set forth in this subsection, shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.). The Department shall publish administrative procedures that shall be followed in contracting with a building official of the locality. The authority granted to a public institution of higher education under this subsection to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection A of § 23.1-1002.

D. This section shall not apply to the nonhabitable structures, equipment, and wiring owned by a public service company, a certificated provider of telecommunications services, or a franchised cable operator that are built on rights-of-way owned or controlled by the Commonwealth Transportation Board.

1981, c. 325; 1982, c. 97; 1986, c. 133; 2005, cc. 341, 933, 945; 2010, c. 105; 2013, cc. 585, 646.

§ 36-98.2. Appeals from decision of Building Official regarding state-owned buildings

Appeals by the involved state agency from the decision of the Building Official for state-owned buildings shall be made directly to the State Building Code Technical Review Board.

1982, c. 97.

§ 36-98.3. Amusement devices

A. The Board shall have the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices. "Amusement device" means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion, but excluding snow tubing parks and rides, ski terrain parks, ski slopes and ski trails, and (ii) passenger tramways. A "passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. Regulations promulgated hereunder shall include provisions for the following:

1. The issuance of certificates of inspection prior to the operation of an amusement device;

2. The demonstration of financial responsibility of the owner or operator of the amusement device prior to the operation of an amusement device;

3. Maintenance inspections of existing amusement devices;

4. Reporting of accidents resulting in serious injury or death;

5. Immediate investigative inspections following accidents involving an amusement device that result in serious injury or death;

6. Certification of amusement device inspectors;

7. Qualifications of amusement device operators;

8. Notification by amusement device owners or operators of an intent to operate at a location within the Commonwealth; and

9. A timely reconsideration of the decision of the local building department when an amusement device owner or operator is aggrieved by such a decision.

B. In promulgating regulations, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations. Where appropriate, the Board shall establish separate standards for mobile amusement devices and for amusement devices permanently affixed to a site.

C. To assist the Board in the administration of this section, the Board shall appoint an Amusement Device Technical Advisory Committee, which shall be composed of five members who, by virtue of their education, training or employment, have demonstrated adequate knowledge of amusement devices or the amusement industry. The Board shall determine the terms of the Amusement Device Technical Advisory Committee members. The Amusement Device Technical Advisory Committee shall recommend standards for the construction, maintenance, operation and inspection of amusement devices, including the qualifications of amusement device operators and the certification of inspectors, and otherwise perform advisory functions as the Board may require.

D. Inspections required by this section shall be performed by persons certified by the Board pursuant to subdivision 6 of § 36-137 as competent to inspect amusement devices. The provisions of § 36-105 notwithstanding, the local governing body shall enforce the regulations promulgated by the Board for existing amusement devices. Nothing in this section shall be construed to prohibit the local governing body from authorizing inspections to be performed by persons who are not employees of the local governing body, provided those inspectors are certified by the Board as provided herein. The Board is authorized to conduct or cause to be conducted any inspection required by this section, provided that the person performing the inspection on behalf of the Board is certified by the Board as provided herein.

E. To the extent they are not superseded by the provisions of this section and the regulations promulgated hereunder, the provisions of this chapter and the Uniform Statewide Building Code shall apply to amusement devices.

1986, c. 427; 1991, c. 152; 2011, c. 546.

§ 36-99. Provisions of Code; modifications

A. The Building Code shall prescribe building regulations to be complied with in the construction and rehabilitation of buildings and structures, and the equipment therein as defined in § 36-97, and shall prescribe regulations to ensure that such buildings and structures are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations, including procedures to be used by the local building department in the evaluation and granting of modifications for any provision of the Building Code, provided the spirit and functional intent of the Building Code are observed and public health, welfare and safety are assured. The provisions of the Building Code and modifications thereof shall be such as to protect the health, safety and welfare of the residents of the Commonwealth, provided that buildings and structures should be permitted to be constructed, rehabilitated and maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the International Code Council and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § 35.1-1 and licensed as such by the Board of Health pursuant to Chapter 2 (§ 35.1-11 et seq.) of Title 35.1. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the local building department, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

D. The Board, upon a finding that sufficient allegations exist regarding failures noted in several localities of performance standards by either building materials, methods, or design, may conduct hearings on such allegations if it determines that such alleged failures, if proven, would have an adverse impact on the health, safety, or welfare of the citizens of the Commonwealth. After at least 21 days' written notice, the Board shall convene a hearing to consider such allegations. Such notice shall be given to the known manufacturers of the subject building material and as many other interested parties, industry representatives, and trade groups as can reasonably be identified. Following the hearing, the Board, upon finding that (i) the current technical or administrative Code provisions allow use of or result in defective or deficient building materials, methods, or designs, and (ii) immediate action is necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, may issue amended regulations establishing interim performance standards and Code provisions for the installation, application, and use of such building materials, methods or designs in the Commonwealth. Such amended regulations shall become effective upon their publication in the Virginia Register of Regulations. Any amendments to regulations adopted pursuant to this subsection shall become effective upon their publication in the Virginia Register of Regulations and shall be effective for a period of 24 months or until adopted, modified, or repealed by the Board.

1972, c. 829; 1974, c. 433; 1975, c. 394; 1977, cc. 423, 613; 1978, c. 581; 1981, c. 2; 1982, c. 267; 1998, c. 755; 2000, c. 751; 2002, c. 555; 2003, cc. 436, 650, 901.

§ 36-99.01. Provisions related to rehabilitation of existing buildings

A. The General Assembly hereby declares that (i) there is an urgent need to improve the housing conditions of low and moderate income individuals and families, many of whom live in substandard housing, particularly in the older cities of the Commonwealth; (ii) there are large numbers of older residential buildings in the Commonwealth, both occupied and vacant, which are in urgent need of rehabilitation and which must be rehabilitated if the State's citizens are to be housed in decent, sound, and sanitary conditions; and (iii) the application of those building code requirements currently in force to housing rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

B. The General Assembly further declares that (i) there is an urgent need to improve the existing condition of many of the Commonwealth's stock of commercial properties, particularly in older cities; (ii) there are large numbers of older commercial buildings in the Commonwealth, both

occupied and vacant, that are in urgent need of rehabilitation and that must be rehabilitated if the citizens of the Commonwealth are to be provided with decent, sound and sanitary work spaces; and (iii) the application of the existing building code to such rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

C. The Board is hereby directed and empowered to make such changes as are necessary to fulfill the intent of the General Assembly as expressed in subsections A and B, including, but not limited to amendments to the Building Code and adequate training of building officials, enforcement personnel, contractors, and design professionals throughout the Commonwealth.

2000, c. 35; 2002, c. 555.

§ 36-99.1. Repealed

Repealed by Acts 1994, c. 895, effective July 1, 1995.

§ 36-99.2. Standards for replacement glass

Any replacement glass installed in buildings constructed prior to the effective date of the Uniform Statewide Building Code shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

1976, c. 137.

§ 36-99.3. Smoke detectors and automatic sprinkler systems in colleges and universities

A. College or university buildings containing dormitories for sleeping purposes shall be provided with battery or AC powered smoke detector devices installed therein in accordance with the Uniform Statewide Building Code. All public or private college and university dormitories shall have installed and use due diligence in maintaining in good working order such detectors regardless of when the building was constructed.

B. The Board of Housing and Community Development shall promulgate regulations pursuant to § 2.2-4011 establishing standards for automatic sprinkler systems throughout all public or private college or university buildings which are (i) more than seventy-five feet or more than six stories high and (ii) used, in whole or in part, as dormitories to house students. Such buildings shall be equipped with automatic sprinkler systems by September 1, 1999, regardless of when such buildings were constructed.

C. The chief administrative office of the college or university shall obtain a certificate of compliance with the provisions of this section from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Department of General Services.

D. The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled twenty-four hours a day by military guards.

1982, c. 357; 1997, c. 584.

§ 36-99.4. Smoke detectors in certain juvenile care facilities

Battery or AC-powered smoke detector devices shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children or juveniles which are operated by or under the auspices of the Department of Juvenile Justice, regardless of when the building was constructed, in accordance with the provision of the Uniform Statewide Building Code by July 1, 1986. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke detector devices.

1984, c. 179; 1989, c. 733 .

§ 36-99.5. Smoke detectors for the deaf and hearing-impaired

Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than twenty individuals;

2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or

3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each seventy units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than thirty-five units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing-impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke detector, not to exceed the original cost or replacement cost, whichever is greater, of the smoke detector. Rental fees shall not be increased as compensation for this requirement.

Landlords shall notify hearing-impaired tenants of the availability of special smoke detectors; however, no landlord shall be civilly or criminally liable for failure to so notify. New tenants shall be asked, in writing, at the time of rental, whether visual smoke detectors will be needed.

Failure to comply with the provisions of this section within a reasonable time shall be punishable as a Class 3 misdemeanor.

This law shall have no effect upon existing local law or regulation which exceeds the provisions prescribed herein; however, any locality with an ordinance shall follow a uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.).

1984, c. 753; 1988, c. 183; 2011, c. 766.

§ 36-99.5:1. Smoke detectors and other fire detection and suppression systems in assisted living facilities, adult day care centers and nursing homes and facilities

A. Battery- or AC-powered smoke detector devices shall be installed in all assisted living facilities and adult day care centers licensed by the Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the Uniform Statewide Building Code.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the facility or center is located, or in the case of state-owned buildings, from the Department of General Services.

The licensee shall maintain the smoke detector devices in good working order.

B. The Board of Housing and Community Development shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for requiring (i) smoke detectors and (ii) such other fire detection and suppression systems as deemed necessary by the Board to increase the safety of persons in assisted living facilities, residential dwelling units designed or developed and marketed to senior citizens, nursing homes and nursing facilities. All nursing homes and nursing facilities which are already equipped with sprinkler systems shall comply with regulations relating to smoke detectors.

1988, c. 55; 1990, cc. 448, 703; 1992, c. 356; 1993, cc. 957, 993; 2004, c. 584.

§ 36-99.6. Underground and aboveground storage tank inspections

A. The Board of Housing and Community Development shall incorporate, as part of the Building Code, regulations adopted and promulgated by the State Water Control Board governing the installation, repair, upgrade and closure of underground and aboveground storage tanks.

B. Inspections undertaken pursuant to such Building Code regulations shall be done by employees of the local building department or another individual authorized by the local building department.

1987, c. 528; 1992, c. 456; 1994, c. 256.

§ 36-99.6:1. Repealed

Repealed by Acts 1994, c. 256.

§ 36-99.6:2. Installation of in-building emergency communication equipment for emergency public safety personnel

The Board of Housing and Community Development shall promulgate regulations as part of the Building Code requiring such new commercial, industrial, and multifamily buildings as determined by the Board be (i) designed and constructed so that emergency public safety personnel may send and receive emergency communications from within those structures or (ii) equipped with emergency communications equipment so that emergency public safety personnel may send and receive emergency communications from within those structures.

For the purposes of this section:

"Emergency communications equipment" includes, but is not limited to, two-way radio communications, signal boosters, bi-directional amplifiers, radiating cable systems or internal multiple antenna, or any combination of the foregoing.

"Emergency public safety personnel" includes firefighters, emergency medical services personnel, law-enforcement officers, and other emergency public safety personnel routinely called upon to provide emergency assistance to members of the public in a wide variety of emergency situations, including, but not limited to, fires, medical emergencies, violent crimes, and terrorist attacks.

2003, c. 611.

§ 36-99.6:3. Regulation of HVAC facilities

The Board shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for heating, ventilation, and air conditioning (HVAC) facilities in new, privately owned residential dwellings.

2004, c. 132.

§ 36-99.7. Asbestos inspection in buildings to be renovated or demolished; exceptions

A. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1985, to be renovated or demolished until the local building department receives certification from the owner or his agent that the affected portions of the building have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M), and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.1101). Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR 763 and subsequent amendments thereto.

B. To meet the inspection requirements of subsection A except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floor-covering, or siding materials may be satisfied by a statement that the materials to be repaired or

replaced are assumed to contain friable asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor.

C. The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units, unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than thirty-five cubic feet off facility components where the length or area could not be measured previously.

D. An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

1987, c. 656; 1988, c. 723; 1989, c. 398; 1990, c. 823; 1993, c. 660; 1996, c. 742; 1997, c. 166.

§ 36-99.8. Skirting

Manufactured homes installed or relocated pursuant to the Building Code shall have skirting installed within sixty days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of eighteen inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the Building Code.

As used in this section, "skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

1990, c. 593 .

§ 36-99.9. Standards for fire suppression systems in certain facilities

The Board of Housing and Community Development shall promulgate regulations by October 1, 1990, in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, establishing standards for fire suppression systems in nursing facilities and nursing homes, regardless of when such facilities or institutions were constructed. In the development of these standards, the Board shall seek input from relevant state agencies.

Units consisting of certified long-term care beds described in this section and § 32.1-126.2 located on the ground floor of general hospitals shall be exempt from the requirements of this section.

1990, c. 804 .

§ 36-99.9:1. Standards for fire suppression systems in hospitals

The Board of Housing and Community Development shall promulgate regulations, to be effective by October 1, 1995, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), establishing standards for automatic sprinkler systems in hospitals, regardless of when such facilities were constructed. In the development of these standards, the Board shall seek input from relevant state and local agencies as well as affected institutions.

For the purposes of this section and § 32.1-126.3, "automatic sprinkler system" means a device for suppressing fire in patient rooms and other areas of the hospital customarily used for patient care.

1995, c. 631.

§ 36-99.10. Repealed

Repealed by Acts 1994, c. 187.

§ 36-99.10:1. Standards for installation of acoustical treatment measures in certain buildings and structures

The Board of Housing and Community Development shall promulgate regulations by October 1, 1994, for installation of acoustical treatment measures for construction in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Such regulations shall provide for implementation at the option of a local governing body pursuant to the provisions of § 15.2-2295.

1994, c. 745; 2002, c. 180.

§ 36-99.11. Identification of disabled parking spaces by above grade signage

A. All parking spaces reserved for the use of persons with disabilities shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of persons with disabilities. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the disabled within the meaning of this section.

B. All above grade disabled parking space signs shall have the bottom edge of the sign no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of the Uniform Statewide Building Code.

C. Building owners shall install above grade signs identifying all parking spaces reserved for the use of persons with disabilities in accordance with this section and the applicable provisions of the Uniform Statewide Building Code by January 1, 1993.

D. Effective July 1, 1998, all disabled parking signs shall include the following language: PENALTY, $100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four feet above the parking surface.

1992, cc. 753, 764; 1997, cc. 783, 904.

§ 36-100. Notice and hearings on adoption of Code, amendments and repeals

The adoption, amendment, or repeal of any Code provisions shall be exempt from the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, pursuant to subdivision A 12 of § 2.2-4006. Before the adoption, amendment, or repeal of any Code provisions, the Board shall hold at least one public hearing. In addition to the notice requirement contained therein, the Board shall notify in writing the building official or, where none, the local governing body of every city or county in the Commonwealth. At any such hearing all persons desiring to do so shall be afforded an opportunity to present their views.

1972, c. 829; 1977, c. 613; 1991, c. 49; 2006, c. 719; 2010, c. 65.

§ 36-101. Effective date of Code; when local codes may remain in effect

No Code provisions shall be made effective prior to January 1, 1973, or later than September 1, 1973; provided that the initial Building Code shall not become effective earlier than 180 days after the publication thereof.

It is further provided that where, in the opinion of the Review Board, local codes are in substantial conformity with the State Code the local code may, with the concurrence of the Review Board remain in effect for two years from the effective day of the State Code for transition to implementation of the State Code.

1972, c. 829.

§ 36-102. Modification, amendment or repeal of Code provisions

The Board may modify, amend or repeal any Code provisions from time to time as the public interest requires, after notice and hearing as provided in § 36-100 of this chapter. No such modification or amendment shall be made effective earlier than thirty days from the adoption thereof.

1972, c. 829; 1977, c. 613.

§ 36-103. Buildings, etc., existing or projected before effective date of Code

Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as part of the Building Code, building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Subsequent reconstruction, renovation, repair

or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to equipment. However, building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the Building Code in effect at the time a building was constructed without meeting current Building Code requirements, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the Uniform Statewide Building Code.

1972, c. 829; 1976, c. 638; 1982, c. 267; 1986, c. 32; 2002, c. 555; 2003, c. 650.

§ 36-104. Code to be printed and furnished on request; true copy

The Department shall have printed from time to time and keep available in pamphlet form all Code provisions. Such pamphlets shall be furnished upon request to members of the public. A true copy of all such provisions adopted and in force shall be kept in the office of the Department, accessible to the public. The Department may charge a reasonable fee for distribution of the Building Code based on production and distribution costs.

1972, c. 829; 1974, c. 298; 1977, c. 613.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town situated within their respective boundaries.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than $2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated

by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the local building official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement action shall continue to be enforced against the owner.

5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

6. A locality may require by ordinance that any landmark, building or structure that contributes to a district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board unless the local maintenance code official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that it shall be razed, demolished or moved.

For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to or is consistent with the historic or architectural qualities, historic associations, or values for which the district was established pursuant to § 15.2-2306, because it (i) was present during the period of significance, (ii) relates to the documented significance of the district, and (iii) possesses historic integrity or is capable of yielding important information about the period.

7. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the maintenance code official for the locality.

D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a building permit as otherwise provided under this chapter, however, notwithstanding any provision of law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on the owner's property, such applicant shall not be denied a permit under the Building Code solely upon the basis that the property owner has financial obligations to the locality that constitute a lien on such property in favor of the locality. If such applicant is the property owner, in addition to payment of the fees for issuance of a building permit, the locality may require full payment of any and all financial obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For purposes of this subsection, "property owner" means the owner of such property as reflected in the land records of the circuit court clerk where the property is located, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent.

1972, c. 829; 1974, c. 433; 1977, cc. 423, 613; 1978, c. 578; 1981, c. 498; 1982, c. 267; 1992, c. 73; 1993, c. 328; 1994, cc. 214, 256, 574; 1995, cc. 95, 523, 702, 827; 1999, cc. 333, 341; 2001, c. 119; 2002, c. 720; 2003, c. 650; 2004, c. 851; 2006, c. 424; 2007, c. 291; 2009, cc. 181, 184, 551, 586; 2010, c. 63; 2012, cc. 494, 607; 2014, c. 354.

§ 36-105.01. Elevator inspections by contract

The inspection of elevators in existing buildings and the enforcement of the Building Code for elevators shall be in compliance with the regulations adopted by the Board. The building department may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership or corporation who has met the certification requirements established by the Board. The Board shall establish such qualifications and procedures as it deems necessary to certify an approved agency. Such qualifications and procedures shall be based upon nationally accepted standards.

1994, c. 574; 1999, cc. 333, 341.

§ 36-105.1. Inspection and review of plans of buildings under construction

Inspections of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection shall pass to the State Fire Marshal pursuant to the Statewide Fire Prevention Code in those localities which do not enforce the Statewide Fire Prevention Code (§ 27-94 et seq.).

1989, c. 258 .

§ 36-105.1:1. Rental inspections; rental inspection districts; exemptions; penalties

A. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit which has its own cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

B. Localities may inspect residential rental dwelling units. The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with the Building Code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided in subdivision B 3, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section, and

2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating, or (b)

the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize one or more locality-wide rental inspection districts and a local governing body shall limit the boundaries of the proposed rental inspection districts to such areas of the locality that meet the criteria set out in this subsection, or

3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of the Building Code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

C. 1. Notification to owners of dwelling units. Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

2. Notification by owners of dwelling units to locality. The rental inspection ordinance may include a provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental

inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to $50. For purposes of this subsection, notice sent by regular first class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

D. Initial inspection of dwelling units when rental inspection district is established. Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for in subsection C, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such property.

E. Provisions for initial and periodic inspections of multifamily dwelling units. If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10 percent of the dwelling units, of a multifamily development, which includes all of the multifamily buildings which are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce the Building Code, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in subsection H.

F.1. Follow-up inspections. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under the Building Code to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants.

2. Periodic inspections. Except as provided in subdivision F 1, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

G. Exemptions from rental inspection ordinance.

1. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with the Building Code, provided that there are no violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided in subdivision F 2, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of the Building Code during the exemption period, the building department may revoke the exemption previously granted under this section.

2. The local governing body may exempt a residential rental unit otherwise subject to a rental inspection ordinance provided such unit is managed by (i) any person licensed under the provisions of § 54.1-2106.1; (ii) any (a) property manager or (b) managing agent of a landlord as defined in § 55-248.4; (iii) any owner of a publicly traded entity that manages its own multifamily residential rental units; or (iv) any owner or managing agent who, in the determination of the local governing body, has achieved a satisfactory designation as a professional property manager.

H. A local governing body may establish a fee schedule for enforcement of the Building Code, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

I. The provisions of this section shall not, in any way, alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55.

J. The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 to enforce the Building Code.

K. Unless otherwise provided in this section, penalties for violation of this section shall be the same as the penalties provided in the Building Code.

2004, c. 851; 2009, c. 663; 2016, c. 338.

§ 36-105.2. Expired

Expired.

§ 36-105.3. Security of certain records

Building Code officials shall institute procedures to ensure the safe storage and secure handling by local officials having access to or in the possession of engineering and construction drawings and plans containing critical structural components, security equipment and systems, ventilation

systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.).

2003, c. 891.

§ 36-105.4. Occupancy standards for residential dwelling units

The owner or managing agent of a residential dwelling unit may develop and implement occupancy standards restricting the maximum number of occupants permitted to occupy a dwelling unit to two persons per bedroom, which is presumed to be reasonable. For purposes of Chapter 5.1 (§ 36-96.1 et seq.), such occupancy standard is subject to the provisions of applicable state and federal laws and regulations. Under the Uniform Statewide Building Code, each bedroom shall contain at least 70 square feet of floor area, and each bedroom occupied by more than one person shall contain at least 50 square feet of floor area for each occupant. Reasonable occupancy standards of an owner or managing agent shall not be enforceable under the provisions of the Uniform Statewide Building Code.

2013, c. 526.

§ 36-105.5. Enforcement of Building Code on Indian reservations

A. Recognizing the unique relationship between the Commonwealth and certain of its state-recognized Indian tribes, and notwithstanding any other provision of law, neither the Commonwealth nor any locality therein is responsible for the enforcement of the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.) on any Indian reservation recognized by the Commonwealth whereupon a state-recognized Indian tribe has, by duly enacted tribal ordinance, adopted the Uniform Statewide Building Code and (i) assumed sole responsibility for existing buildings and new construction on the reservation and (ii) for purposes of enforcing the ordinance, retained firms or individuals to function as the building official on such reservation.

B. Nothing in this section shall be construed to confer or infer responsibility or liability on any party for any action undertaken prior to July 1, 2015.

2015, c. 135.

§ 36-106. Violation a misdemeanor; civil penalty

A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than $2,500. In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or

remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense committed within less than five years after a first offense under this chapter shall be punished by a fine of not less than $1,000 nor more than $2,500. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than $500 nor more than $2,500. Any person convicted of a third or subsequent offense involving the same property committed within 10 years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than 10 days and a fine of not less than $2,500 nor more than $5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.

B. Violations of any provision of the Building Code, adopted and promulgated pursuant to § 36-103, that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in § 25.1-400, in a locality where the local governing body has taken official action to enforce such provisions, shall be deemed a misdemeanor and any owner or any other person, firm, or corporation convicted of such a violation shall be punished by a fine of not more than $2,500. In addition, each day the violation continues after conviction or the expiration of the court-ordered abatement period shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense, committed within less than five years after a first offense under this chapter shall be punished by confinement in jail for not more than five days and a fine of not less than $1,000 nor more than $2,500, either or both. Provided, however, that the provision for confinement in jail shall not be applicable to any person, firm, or corporation, when such violation involves a multiple-family dwelling unit. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than $500 nor more than $2,500. Any person convicted of a third or subsequent offense involving the same property, committed within 10 years of an offense under this chapter after having been at least twice previously convicted, shall be punished by confinement in jail for not more than 10 days and a fine of not less than $2,500 nor more than $5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.

C. Any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the Code which are not abated, or otherwise remedied through hazard control, promptly after receipt of notice of violation from the local enforcement officer.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than $100 for the initial summons and not more than $350 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $4,000. Designation of a particular Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator and a representative of the locality shall agree in writing to terms of abatement or remediation of the violation within six months after the date of payment of the civil penalty.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate, or otherwise remedy through hazard control, the violation within six months of the date of the assessment of the civil penalty.

If the violation concerns a nonresidential building or structure, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court may order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Any such violator so ordered shall abate, or otherwise remedy through hazard control, the violation within the time specified by the court.

D. Any owner or any other person, firm or corporation violating any Code provisions relating to lead hazard controls that poses a hazard to the health of pregnant women and children under the age of six years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than $2,500. If the court convicts pursuant to this subsection and sets a time by which such hazard must be controlled, each day the hazard remains uncontrolled after the time set for the lead hazard control has expired shall constitute a separate violation of the Uniform Statewide Building Code.

The landlord shall maintain the painted surfaces of the dwelling unit in compliance with the International Property Maintenance Code of the Uniform Statewide Building Code. The landlord's failure to do so shall be enforceable in accordance with the Uniform Statewide Building Code and shall entitle the tenant to terminate the rental agreement.

Termination of the rental agreement or any other action in retaliation against the tenant after written notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an authorized occupant in the dwelling unit, has an elevated blood lead level, shall constitute retaliatory conduct in violation of § 55-248.39.

E. Nothing in this section shall be construed to prohibit a local enforcement officer from issuing a summons or a ticket for violation of any Code provision to the lessor or sublessor of a residential dwelling unit, provided a copy of the notice is served on the owner.

F. Any prosecution under this section shall be commenced within the period provided for in § 19.2-8.

1972, c. 829; 1975, c. 367; 1991, c. 655; 1992, cc. 435, 650; 1993, c. 788; 1994, c. 342; 1995, c. 494; 1998, c. 664; 1999, cc. 251, 362, 392, 1014; 2000, c. 68; 2006, c. 746; 2007, cc. 290, 760; 2010, cc. 87, 94; 2011, cc. 118, 143; 2013, c. 529.

§ 36-107. Employment of personnel for administration of chapter

Subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, the Director may employ such permanent and temporary clerical, technical and other assistants as are necessary or advisable for the proper administration of the provision of this chapter.

1972, c. 829; 1974, c. 668; 1977, c. 613.

§ 36-107.1. Sale of residential structure with lead-based paint levels exceeding Code standards; penalty

Whenever any property owner has been notified by local building officials or representatives of local health departments that any residential premises has levels of lead-based paint in violation of this chapter, such property owner shall notify prospective purchasers in writing of the presence of unacceptable levels of lead-based paint in such premises and the requirements concerning the removal of the same. Such notification shall include a copy of any notice the property owner received from local building officials or representatives of local health departments advising of the presence of unacceptable levels of lead-based paint in such premises.

The notice required herein shall be provided to prospective purchasers prior to the signing of a purchase or sales agreement or, if there is no purchase or sales agreement, prior to the signing of a deed. The requirements shall not apply to purchase and sales agreements or deeds signed prior to July 1, 1991. Transactions in which sellers have accepted written offers prior to July 1, 1991, but have not signed a purchase or sales agreement or a deed prior to July 1, 1991, shall be subject to the notice requirements.

Any person who fails to comply with the provisions of this section shall be liable for all damages caused by his failure to comply and shall, in addition, be liable for a civil penalty not to exceed $1,000.

1991, c. 266 .

Article 2 - STATE BUILDING CODE TECHNICAL REVIEW BOARD

§ 36-108. Board continued; members

There is hereby continued, in the Department, the State Building Code Technical Review Board, consisting of 14 members, appointed by the Governor subject to confirmation by the General Assembly. The members shall include one member who is a registered architect, selected from a slate presented by the Virginia Society of the American Institute of Architects; one member who is a professional engineer in private practice, selected from a slate presented by the Virginia Society of Professional Engineers; one member who is a residential builder, selected from a slate presented by the Home Builders Association of Virginia; one member who is a general contractor, selected from a slate presented by the Virginia Branch, Associated General Contractors of America; two members who have had experience in the field of enforcement of building regulations, selected from a slate presented by the Virginia Building Officials Conference; one member who is employed by a public agency as a fire prevention officer, selected from a slate presented by the Virginia Fire Chiefs Association; one member whose primary occupation is commercial or retail construction or operation and maintenance, selected from a slate presented by the Virginia chapters of Building Owners and Managers Association, International; one member whose primary occupation is residential, multifamily housing construction or operation and maintenance, selected from a slate presented by the Virginia chapters of the National Apartment Association; one member who is an electrical contractor who has held a Class A license for at least 10 years; one member who is a plumbing contractor who has held a Class A license for at least 10 years and one member who is a heating and cooling contractor who has held a Class A license for at least 10 years, both of whom are selected from a combined slate presented by the Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America; and two members from the Commonwealth at large who may be members of local governing bodies. The members shall serve at the pleasure of the Governor.

1972, c. 829; 1974, c. 668; 1976, c. 484; 1977, cc. 92, 613; 1993, c. 626; 1997, c. 860; 2003, c. 950.

§ 36-109. Officers; secretary

The Review Board, under rules adopted by itself, shall elect one of its members as chairman, for a term of two years, and may elect one of its members as vice-chairman. The Review Board may also elect a secretary, who may be a nonmember.

1972, c. 829.

§ 36-110. Repealed

Repealed by Acts 1980, c. 728.

§ 36-111. Oath and bonds

Before entering upon the discharge of his duties, each member of the Review Board shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein; and shall give bond with corporate surety in such penalty as may be fixed by the Governor, conditioned upon the faithful discharge of his duties. The premiums on such bonds shall be paid for as other expenses of the Department are paid.

1972, c. 829; 1974, c. 668; 1977, c. 613.

§ 36-112. Meetings

The Review Board shall meet at the call of the chairman, or at the written request of at least three of its members; provided that it shall act within thirty days following receipt of any appeal made under the provisions of this chapter.

1972, c. 829.

§ 36-113. Offices

The Review Board shall be furnished adequate space and quarters in the suite of offices of the Department, and such Board's main office shall be therein.

1972, c. 829; 1974, c. 668; 1977, c. 613.

§ 36-114. Board to hear appeals

The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Virginia Amusement Device Regulations adopted pursuant to § 36-98.3, the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), and rules and regulations implementing the Industrialized Building Safety Law (§ 36-70 et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required.

1972, c. 829; 1977, c. 423; 1986, cc. 37, 429; 1994, c. 406; 2003, c. 650; 2010, c. 63.

§ 36-115. Subpoenas; witnesses; designation of subordinates

In any matter before it on appeal for hearing and determination, the Review Board, or its designated subordinates, may compel the attendance of all needed witnesses in like manner as a

circuit court, save the Review Board shall not have the power of imprisonment. In taking evidence, the chairman or any member of the Review Board, or its designated subordinates, shall have the power to administer oaths to witnesses. Where a designated subordinate of the Review Board presides over hearings on appeals, such subordinate shall submit recommended findings and a decision to the Review Board pursuant to § 2.2-4020.

1972, c. 829; 1977, c. 423; 1996, c. 620.

§ 36-116. Repealed

Repealed by Acts 1977, c. 613.

§ 36-117. Record of decisions

A record of all decisions of the Review Board, properly indexed, shall be kept in the office of such Board. Such record shall be open to public inspection at all times during business hours.

1972, c. 829.

§ 36-118. Interpretation of Code; recommendation of modifications

The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

1972, c. 829; 1977, c. 613; 1986, c. 429.

§ 36-119. Rules and regulations under § 36-73 not superseded

This chapter shall not amend, supersede, or repeal the rules and regulations prescribing standards to be complied with, in industrialized building units and mobile homes promulgated under § 36-73.

1972, c. 829.

§ 36-119.1. Existing buildings

This chapter shall not supersede provisions of the Fire Prevention Code promulgated by the Board under § 27-97, that prescribe standards to be complied with in existing buildings or structures, provided that such regulations shall not impose requirements that are more restrictive than those of the Uniform Statewide Building Code under which the buildings or structures were constructed. Subsequent alteration, enlargement, rehabilitation, repair, or conversion of the occupancy classification of such buildings and structures shall be subject to the construction and rehabilitation provisions of the Building Code.

1986, c. 429; 1988, c. 199; 2002, c. 555; 2003, c. 650.

Chapter 7 - STATE BOARD OF HOUSING [Repealed]

§§ 36-120 through 36-130. Repealed

Repealed by Acts 1977, c. 613.

Chapter 8 - DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

§ 36-131. Definitions

As used in this chapter, the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

"Board" means the Board of Housing and Community Development.

"Consolidated Plan" means a document setting forth various housing and community development goals, objectives, and strategies to be followed by the Commonwealth in addressing housing and community development conditions in the Commonwealth and serving as the strategic plan for the programs established by the Department and, to the extent and in the manner determined in accordance with § 36-55.27:1, for the programs established by the Virginia Housing Development Authority. The Consolidated Plan will identify housing and community development needs in the Commonwealth; the level of investment and charges to state housing programs and community development necessary to address the need; the availability of state, local, federal, and non-governmental sources of funds; and the appropriate mix of loans, grants, and other alternative funding methods for implementing the strategy.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development.

1977, c. 613; 1992, c. 754; 2002, c. 461.

§ 36-132. Creation of Department; appointment of Director

There is hereby created in the executive department the Department of Housing and Community Development. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with his own.

1977, c. 613; 1984, c. 720.

§ 36-132.1. Commission on Local Government

The Department shall include the Commission on Local Government, which shall exercise the powers and duties described in §§ 15.2-1301 and 15.2-2303.2 and Chapters 29 (§ 15.2-2900 et seq.), 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 34 (§ 15.2-3400 et seq.), 35 (§ 15.2-3500 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), 40 (§ 15.2-4000 et seq.), and 41 (§ 15.2-4100 et seq.) of Title 15.2 and § 30-19.03.

2003, c. 197; 2010, c. 410.

§ 36-133. Director to supervise Department

The Director of the Department of Housing and Community Development shall, under the direction and control of the Governor be responsible for the supervision of the Department and shall

exercise such other powers and perform such other duties as may be required of him by the Governor.

1977, c. 613; 1984, c. 720.

§ 36-134. General powers of Director

The Director shall have the following general powers:

A. To employ such personnel as may be required to carry out the purposes of this chapter.

B. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of this Commonwealth.

C. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

D. To do all acts necessary or convenient to carry out the purposes of this chapter.

1977, c. 613.

§ 36-135. Board of Housing and Community Development; members; terms; chairman; appointment of ad hoc committee

A. The Board of Housing and Community Development within the Department of Housing and Community Development shall consist of 14 members as follows: 11 members, one representing each congressional district in the Commonwealth, who are appointed by the Governor, subject to confirmation by the General Assembly, the Executive Director of the Virginia Housing Development Authority as an ex officio voting member; a member of the Virginia Fire Services Board, to be appointed by the chairman of that Board; and the Director of Regulatory Compliance of the Virginia Building and Code Officials Association, who shall be a member of the Board's Codes and Standards Committee, but shall not serve as either the chairman of such committee or of the Board. Members shall serve for four-year terms and no member shall serve for more than two full successive terms. A chairman of the Board shall be elected annually by the Board.

B. Whenever the Board of Housing and Community Development proposes a change to statewide building and fire regulations, the Board may convene an ad hoc committee, including but not limited to representatives of those industry groups directly affected by such change, to advise the Board on such matters.

1977, c. 613; 1989, c. 258; 1992, c. 754; 1993, c. 139; 1997, c. 860; 2003, c. 434; 2004, c. 944; 2012, c. 747.

§ 36-136. Meetings of Board

The Board shall meet at least once every three months, and on the call of the chairman, when, in his opinion, additional meetings are necessary.

1977, c. 613.

§ 36-137. Powers and duties of Board; appointment of Building Code Academy Advisory Committee

The Board shall exercise the following powers and duties, and such others as may be provided by law:

1. Provide a means of citizen access to the Department.

2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.

3. Monitor the policies and activities of the Department and have the right of access to departmental information.

4. Advise the Governor and the Director on matters relating to housing and community development.

5. Make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary.

6. Issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.), Chapter 9 (§ 27-94 et seq.) of Title 27, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.

7. Levy by regulation up to two percent of permit fees authorized pursuant to §§ 36-98.3 and 36-105 to support training programs of the Building Code Academy established pursuant to § 36-139. Local building departments shall collect such levy and transmit it quarterly to the Department of Housing and Community Development. Localities that maintain, individual or regional, training academies accredited by the Department of Housing and Community Development shall retain such levy. However, such localities may send employees to training programs of the Building Code Academy upon payment of a fee calculated to cover the cost of such training. Any unspent balance shall be reappropriated each year for the continued operation of the Building Code Academy.

The Board shall appoint a Building Code Academy Advisory Committee (the Committee) comprised of representatives of code enforcement personnel and construction industry professions affected by the provisions of the building and fire prevention regulations promulgated by the Board. Members of the Committee shall receive no compensation but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties in accordance with § 2.2-2813. The Committee shall advise the Board and the Director on policies, procedures, operations, and other matters pertinent to enhancing the delivery of training services provided by the Building Code Academy.

8. Establish general policies, procedures, and programs for the Virginia Housing Trust Fund established in Chapter 9 (§ 36-141 et seq.).

9. Determine the categories of housing programs, housing sponsors and persons and families of low and moderate income eligible to participate in grant or loan programs of the Virginia Housing Trust Fund and designate the proportion of such grants or loans to be made available in each category.

10. Advise the Director of the Department on the program guidelines required to accomplish the policies and procedures of the Virginia Housing Trust Fund.

11. Advise the Virginia Housing Development Authority and the Director of the Department on matters relating to the administration and management of loans and grants from the Virginia Housing Trust Fund.

12. Establish the amount of the low-income housing credit, the terms and conditions for qualifying for such credit, and the terms and conditions for computing any credit recapture amount for the Virginia income tax return.

13. (Effective until October 1, 2016) Serve in an advisory capacity to the Center for Housing Research established by § 23-135.7:14.

13. (Effective October 1, 2016) Serve in an advisory capacity to the Center for Housing Research established by § 23.1-2633.

14. Advise the Department in the development of the Consolidated Plan Strategy to guide and coordinate the housing programs of the Department, the Virginia Housing Development Authority, and other state agencies and instrumentalities.

15. Advise the Governor and the Department on the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

16. Establish guidelines for the allocation of private activity bonds to local housing authorities in accordance with the provisions of the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2.

1977, c. 613; 1978, c. 751; 1980, c. 107; 1981, c. 309; 1984, c. 720; 1986, c. 427; 1988, c. 687; 1989, c. 279; 1992, c. 754; 1993, c. 814; 2002, cc. 245, 461, 555; 2008, c. 445; 2010, c. 66; 2013, c. 754.

§ 36-138. Repealed

Repealed by Acts 1980, c. 728.

§ 36-139. Powers and duties of Director

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.

14. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

15. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.

16. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.

17. Advising the Board on matters relating to policies and programs of the Virginia Housing Trust Fund.

18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Trust Fund and to carry out the policies and procedures established by the Board.

19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing Trust Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are to be made from such fund; directing the Virginia Housing Development Authority and the Department as to the closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing the Department as to the regulation and monitoring of the ownership, occupancy and operation of the housing developments and residential housing financed or assisted by such loans and grants; and providing direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in such fund.

20. Establishing and administering program guidelines for a statewide homeless intervention program.

21. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and associated services to low-income households within the Commonwealth in accordance with applicable federal law and regulations.

22. Developing a strategy concerning the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

23. Serving as the Executive Director of the Commission on Local Government as prescribed in § 15.2-2901 and perform all other duties of that position as prescribed by law.

24. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the creation and implementation of housing programs and community development for the pur-

pose of meeting the housing needs of persons who have been released from federal, state, and local correctional facilities into communities.

25. Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2 jointly with the Virginia Small Business Financing Authority and the Virginia Housing Development Authority.

26. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

1977, c. 613; 1978, cc. 737, 751; 1981, cc. 309, 315; 1982, c. 36; 1986, c. 427; 1988, c. 687; 1989, cc. 258, 279; 1992, c. 754; 1994, cc. 44, 140; 1998, c. 693; 2002, cc. 245, 461, 555; 2003, c. 197; 2006, c. 721; 2007, cc. 647, 741; 2008, c. 445; 2013, c. 754; 2016, c. 305.

§ 36-139.1. Sale of real property for housing demonstration projects

The Director is authorized to sell surplus real property belonging to the Commonwealth which is placed under the control of the Department for the purpose of establishing owner-occupied residential housing demonstration projects, with the prior written approval of the Governor or his designee, who shall first consider the written recommendation of the Director of the Department of General Services. The methods, terms and conditions of sale shall be developed in cooperation with the Department of General Services. Any contract of sale or deed of conveyance shall be approved as to form by the Attorney General or one of his deputies or assistant attorneys general. The proceeds from all such sales shall be handled in the manner prescribed in subsection H of § 2.2-1156.

1988, c. 195; 2009, c. 612.

§§ 36-139.2 through 36-139.4. Repealed

Repealed by Acts 2007, cc. 647 and 741, cl. 2, effective July 1, 2008.

§ 36-139.5. Power to enter into agreements with owners of housing developments eligible for federal low-income housing credits

The Department may enter into agreements with the owners of housing developments which are or will be eligible for low-income housing credits under the United States Internal Revenue Code. Any such agreement shall contain covenants and restrictions as shall be required by the United States Internal Revenue Code and such other provisions as the Department shall deem necessary or appropriate. Any such agreement shall be enforceable in accordance with its terms in any court of competent jurisdiction in the Commonwealth by the Department or by such other persons as shall be specified in the United States Internal Revenue Code. Any such agreement, when duly recorded as a restrictive covenant among the land records of the jurisdiction or jurisdictions in which the development is located, shall run with the land and be binding on the successors and assigns of the owner. All references in this section to the United States Internal Revenue Code shall include any amendments thereto and any regulations promulgated thereunder, as the foregoing may be or become effective at any time.

1992, c. 455 .

§ 36-139.5:1. Eligibility for Industrial Site Development Program

The Department, in determining eligibility for the Industrial Site Development Program, shall allow exceptions to the Department's minimum requirement of 200 net developable acres because of geographic topographic or land availability limitations.

2001, c. 65.

§ 36-139.6. Additional powers and duties of Director; oversight of planning district commissions

The Director of the Department of Housing and Community Development shall have the following powers and duties relating to oversight of planning district commissions:

1. To recommend to the Governor the level of state general appropriation funding for each planning district commission, taking into consideration the minimum funding level necessary for operation, the population of each district, and other factors considered appropriate;

2. To distribute state general appropriation funding to planning district commissions consistent with the provisions of this chapter and Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2;

3. To administer the Regional Cooperation Incentive Fund in accordance with § 15.2-4217;

4. To provide technical assistance to planning district commissions regarding regional approaches to area-wide problems. Assistance may be initiated by the Department, individual local governments, or planning district commissions;

5. To require the submission of annual programmatic and financial information by each planning district commission in a format prescribed by the Director;

6. To prepare a biennial report to the Governor and the General Assembly which identifies the activities and other information deemed appropriate by the Director concerning planning district commissions, including findings as to planning district commissions which are not complying with Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2. Copies of the biennial report shall also be sent to the Commission on Local Government, Department of Small Business and Supplier Diversity, Department of Conservation and Recreation, Department of Environmental Quality, Department of Planning and Budget, Department of Transportation, Virginia Economic Development Partnership, and others upon request; and

7. To establish the Virginia Planning District Commission Council made up of the chairman or designated representative from each planning district commission to advise Department staff on programs, rules and regulations for the planning district commissions. Technical committees of planning district commission staff, state and local agency staff, and private sector individuals as needed, may be created.

1995, cc. 732, 796; 1996, cc. 589, 590, 598, 599; 2013, c. 482.

§ 36-139.7. Boundaries of planning districts

A. The Department shall review the boundaries of planning districts following every United States decennial census of population. The Department shall also review the boundaries upon the request of a member jurisdiction of a planning district. An initial review shall be conducted prior to July 1, 1996. Upon concluding such review, the Department shall, subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), make adjustments to the boundaries of planning districts as it deems advisable.

B. The Department shall consider the following criteria in making determinations as to the governmental subdivisions to be included in a planning district: recognition of communities of interest among the governmental subdivisions, recognition of common economic and market interests, the ease of communications and commissioner travel time, metropolitan statistical area boundaries designated by the federal government, a population base adequate to ensure financial viability, and geographic factors and natural boundaries. In making such determination, the Department shall also consider the wishes of a governmental subdivision within or surrounding a proposed planning district, as expressed by resolution of its governing body.

C. In conducting the boundaries review, the Department shall consult with the governing bodies of the governmental subdivisions within and adjoining a planning district which is proposed to be changed and shall hold such public and other hearing as it may deem advisable, provided at least one public hearing shall be held in each planning district which is proposed to be changed.

D. To the extent practical, upon completion of a statutory review of planning district boundaries, state agencies may provide for sorting local statistical data according to planning district geography for external use of information for state, regional and local strategic and economic development planning.

1995, cc. 732, 796.

§ 36-139.8. Repealed
Repealed by Acts 2004, c. 872.

§ 36-140. Repealed
Repealed by Acts 1995, cc. 732 and 796.

Chapter 8.1 - LIVE IN OUR COMMUNITY POLICE HOUSING PROGRAM [Repealed]

§§ 36-140.1, 36-140.2. Expired
Expired.

Chapter 9 - VIRGINIA HOUSING TRUST FUND

§ 36-141. Definitions
As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Housing and Community Development.

"Department" means the Department of Housing and Community Development.

"Fund" means the Virginia Housing Trust Fund created by this chapter.

"HDA" means the Virginia Housing Development Authority created in Chapter 1.2 (§ 36-55.24 et seq.).

"Housing development" or "housing project" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this chapter for the primary purpose of providing affordable sanitary, decent and safe dwelling accommodations for persons and families of low or moderate income in need of housing; such work or undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and such offices, and other nonhousing facilities incidental to such development or project such as administrative, community, health, educational and recreational facilities as the Department of Housing and Community Development determines to be necessary. "Low and moderate income" shall be defined in the program guidelines developed by the Department of Housing and Community Development.

"Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, corporations, cooperatives and condominiums, approved by the Department of Housing and Community Development as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development, whether nonprofit or organized for limited profit subject to the regulatory powers of the Department of Housing and Community Development and other terms and conditions set forth in this chapter.

"Residential housing" means a specific work or improvement within this Commonwealth, whether multi-family residential housing or single-family residential housing undertaken primarily to provide dwelling accommodations, including the acquisition, construction, rehabilitation, preservation or improvement of land, buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental, related, or appurtenant thereto.

1988, c. 687; 2013, c. 754.

§ 36-142. Creation and management of Fund

A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be known as the "Virginia Housing Trust Fund." The Fund shall be established on the books of the Comptroller and consist of sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to housing sponsors and persons and families of low and moderate income, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private. The Fund shall also consist of such other sums as may be made available to it and shall include federal grants solicited and received for the specific purposes of the Fund and all interest and income from investment of the

Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All moneys designated for the Fund shall be paid into the state treasury and credited to the Fund.

B. The Department shall:

1. Work in collaboration with the HDA to provide loan origination and servicing activities as needed to carry out the purposes of the Fund. The costs of such services shall be considered an eligible use of the Fund; and

2. Use, through HDA, at least 80 percent of the moneys from the Fund to provide flexible financing for low-interest loans through eligible organizations. Such loans shall be structured to maximize leveraging opportunities. All such funds shall be repaid to the credit of the Fund. Loans may be provided for (i) affordable rental housing to include new construction, rehabilitation, repair, or acquisition of housing to assist low or moderate income citizens, including land and land improvements; (ii) down payment and closing cost assistance for homebuyers; and (iii) short-term, medium-term, and long-term loans to reduce the cost of homeownership and rental housing. Moneys required by the HDA to fund such loans and perform loan closing and disbursement services shall be transferred from the Fund to the HDA.

The Department may use up to 20 percent of the moneys from the Fund to provide grants through eligible organizations for targeted efforts to reduce homelessness, including (a) temporary rental assistance, not to exceed one year; (b) housing stabilization services in permanent supportive housing for homeless individuals and homeless families; (c) mortgage foreclosure counseling targeted at localities with the highest incidence of foreclosure activity; and (d) predevelopment assistance for permanent supportive housing and other long-term housing options for the homeless.

C. The Fund shall be administered and managed by the Department as prescribed in this chapter. In order to carry out the administration and management of the Fund, the Department is granted the power to contract with or employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, public accountants, engineers and other technical advisers and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Department may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund, including reasonable fees and costs of the HDA.

D. For the purposes of this section, eligible organizations include (i) localities, (ii) local government housing authorities, (iii) regional and statewide housing assistance organizations that provide assistance to low and moderate income or low income citizens of Virginia, and (iv) limited liability companies expressly created for the purpose of owning and operating affordable housing.

E. In any year prior to the expenditure of any general funds appropriated for the Fund for the next succeeding fiscal year, the Department, in conjunction with HDA, shall submit a plan outlining

the proposed uses of such funds to the General Assembly. The plan shall be provided to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance no later than November 1 of each year.

1988, c. 687; 2013, c. 754.

§ 36-143. Deposit of money; expenditures; investments

All money transferred to the control of the HDA from the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the HDA or other officers or employees designated by the Commissioners of the HDA. All deposits of money shall, if required by the Director of the Department of Housing and Community Development, be secured in a manner determined by the Director of the Department of Housing and Community Development to be prudent. All banks, trust companies and savings and loan associations are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the HDA. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the HDA at the direction and guidance of the Director of the Department of Housing and Community Development in obligations or securities which are considered lawful investments for public funds under the laws of the Commonwealth. All interest and earnings accrued from investments of moneys from the Fund shall be used to increase the amount available in the Fund.

1988, c. 687; 1996, c. 77; 2013, c. 754.

§ 36-144. Annual audit

An independent certified public accountant selected by the HDA, shall annually audit the accounts of any portion of the Fund transferred to the control of the HDA, and the cost of such audit services shall be borne by the HDA and be paid from moneys designated for such purposes in the Fund. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as considered necessary under the circumstances. Such audit shall be reviewed by the Auditor of Public Accounts. The HDA shall furnish copies of the audit to the Governor and to the Board.

1988, c. 687; 2013, c. 754.

§ 36-145. Collection of money due Fund

The HDA is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan made to a housing sponsor or a person or family of low or moderate income and funded from the portion of the Fund transferred to its control in order to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the HDA in the name of the Fund in the appropriate circuit court.

1988, c. 687; 2013, c. 754.

§ 36-146. Loans

Except as otherwise provided in this chapter, money in the Fund shall be used to make loans to housing sponsors and to persons and families of low and moderate income to finance or refinance the acquisition, construction, improvement, ownership or occupancy of housing developments and residential housing for persons and families of low and moderate income.

Except as provided in this chapter, the Department of Housing and Community Development shall determine the terms and conditions of any loan from the Fund, including but not limited to the interest rate and repayment terms of each loan. All loans from the Fund shall be evidenced by appropriate notes of the loan recipient payable to the Fund. Any such loans made with respect to dwellings of residents of the Commonwealth shall be limited to dwellings occupied by persons or families of low and moderate income. The Director of the Department of Housing and Community Development is authorized to require in connection with any loan from the Fund any documents, instruments, certificates, legal opinions or other information it deems necessary or convenient.

1988, c. 687.

§ 36-147. Grants

Subject to any restrictions which may apply to the use of money in the Fund, the Board in its discretion may approve the use of money in the Fund to make grants or appropriations to housing sponsors and persons and families of low and moderate income to provide assistance for the acquisition, construction, improvement, ownership or occupancy of housing developments and residential housing for persons and families of low and moderate income. Grants shall be disbursed from the Fund by the State Treasurer in accordance with the directions of the Director of the Department of Housing and Community Development.

1988, c. 687; 2013, c. 754.

§ 36-148. Pledge of assets to secure bonds of the HDA

The HDA is empowered at any time and from time to time to transfer, upon the direction of the Director of the Department of Housing and Community Development, from the portion of the Fund under its control to banks or trust companies designated by the HDA any or all of the assets of the Fund to be held in trust as security for the payment of the principal of and premium, if any, and interest on any or all of the bonds of the HDA. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal of and premium, if any, and interest on such bonds of the HDA to which the assets have been pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of and premium, if any, and interest on such bonds of the HDA. Any

assets of the Fund transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge to secure the bonds of the HDA and shall be held by the trustee to which they are pledged until no longer required for such purpose by the terms of the pledge. On or before January 10 of each year, the HDA shall transfer, or shall cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth above which are no longer required to be held in trust pursuant to the terms of the pledge.

1988, c. 687; 2013, c. 754.

§ 36-148.1. Authorization of funding from HDA

The HDA and the Department of Housing and Community Development, on behalf of the Fund, may enter into agreements whereby the Fund may obtain funding from the HDA for the financing of loans in accordance with this chapter, subject to such terms and conditions as shall be set forth therein. To the extent so provided by the terms of any such agreements, moneys in the Fund may be used to repay the HDA any amounts owed thereunder, and assets of the fund may be pledged to the HDA pursuant to such agreements to secure the repayment of such amounts. Any such agreements entered into by the HDA and the Department of Housing and Community Development prior to February 25, 1991, are hereby validated.

1991, c. 48 .

§ 36-149. Formation of corporation

For the purposes set forth in §§ 36-141 through 36-148, the HDA may form a corporation to administer and manage the portion of the Fund under its control in accordance with the provisions thereof and to exercise and perform any or all of the powers and duties provided therein. Such corporation shall be under the control and supervision of the HDA. Such corporation shall have such of the powers and duties of the HDA set forth in the above referenced sections as HDA shall delegate to such corporation and such other powers and duties as shall be provided by the documents and instruments creating and governing the corporation and by applicable state law. The provisions of the above referenced sections authorizing or requiring the HDA to exercise any power or to perform any duty shall be deemed to authorize or require such corporation to exercise any such power or to perform any such duty as shall be delegated by the HDA to such corporation.

1988, c. 687; 2013, c. 754.

§ 36-150. Reports

On or before December 1 of each year, the Department shall report to the Secretary of Commerce and Trade, the Governor and the Chairmen of the House Appropriations and the Senate Finance Committees and on such other matters regarding the Fund as the Department may deem appropriate, including the status of the former Housing Partnership Fund, or other items as may be requested by any of the foregoing persons to whom such report is to be submitted.

1988, c. 687; 2013, c. 754.

§ 36-151. Liberal construction of chapter

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

1988, c. 687.

Chapter 10 - VIRGINIA REMOVAL OR REHABILITATION OF DERELICT STRUCTURES FUND

§ 36-152. Definitions

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Housing and Community Development.

"Department" means the Department of Housing and Community Development.

"Derelict structures" means residential, commercial or industrial structures which are no longer being used for a place of habitation, business or industry and which are in such poor condition as to cause a blight upon the neighborhood in which any such structure is located.

"Fund" means the Virginia Removal or Rehabilitation of Derelict Structures Fund created by this chapter.

"Local government" or "locality" means any county, city or town in the Commonwealth.

1999, c. 1018.

§ 36-153. Creation and management of Fund

There is hereby established in the state treasury a special nonreverting permanent fund to be known as the Virginia Removal or Rehabilitation of Derelict Structures Fund. The Fund shall consist of sums appropriated to the Fund by the General Assembly; sums which may be allocated to the Commonwealth for this purpose by the United States government; all interest earned on moneys in the Fund; and any other sums designated for deposit to the Fund from any source, public or private. The Fund is created to address the serious problem of derelict structures in the Commonwealth, particularly in urban areas. The Fund shall make grants to local governments for acquisition, demolition, removal, rehabilitation or repair of specific derelict structures.

The Fund shall be administered and managed by the Department as prescribed in this chapter. The Department may disburse from the Fund reasonable costs and expenses incurred in administration and management of the Fund.

1999, c. 1018.

§ 36-154. Annual audit

The Auditor of Public Accounts or his legally authorized representatives shall annually audit the accounts of the Fund in accordance with generally accepted auditing standards, and the cost of such audit services shall be borne by the Fund.

1999, c. 1018.

§ 36-155. Grants

Except as otherwise provided in this chapter, money in the Fund shall be used to make grants to local governments to finance the acquisition, removal, rehabilitation, repair or demolition of derelict structures. No grant shall exceed $1,000,000. Each grant shall be conditioned upon a 100 percent match of funds by the local government. The Board shall develop guidelines for the administration of the grant program established by this chapter.

1999, c. 1018; 2000, cc. 789, 795; 2004, c. 577.

§ 36-156. Reports

On or before September 30 of each year, each local government recipient shall report to the Department on the status of the properties acquired by the locality with the grant.

1999, c. 1018; 2004, c. 577.

Chapter 10.1 - VIRGINIA DEFECTIVE DRYWALL CORRECTION AND RESTORATION ASSISTANCE FUND

§ 36-156.1. Definitions

As used in this chapter, unless the context requires a different meaning:

"Authority" means the Virginia Resources Authority.

"Bona fide prospective purchaser" means a person who acquires ownership, or proposes to acquire ownership, of real property affected by defective drywall.

"Cost," as applied to any project financed under the provisions of this chapter, means the reasonable and necessary costs incurred for carrying out all works and undertakings necessary or incident to the correction or elimination of defective drywall. It includes, without limitation, all necessary developmental, planning, and feasibility studies, surveys, plans, and specifications; architectural, engineering, financial, legal, or other special services; site assessments, remediation, containment, and demolition or removal of existing structures or portions thereof; the discharge of any obligation of the seller of such land, buildings, or improvements; labor; materials, machinery, and equipment; the funding of accounts and reserves that the Authority may require; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred prior to completion of the project; and the cost of other items that the Authority determines to be reasonable and necessary.

"Defective drywall" means drywall or similar building material composed of dried gypsum-based plaster that (i) contains elemental sulfur exceeding 10 parts per million as has been found in some

drywall manufactured in the People's Republic of China and imported into the United States between 2004 and 2007 and, when exposed to heat, humidity, or both, releases elevated levels of hydrogen sulfide gas into the air or (ii) has been designated by the U.S. Consumer Product Safety Commission as a product with a product defect that constitutes a substantial product hazard within the meaning of § 15 (a)(2) of the Consumer Product Safety Act (15 U.S.C. § 2064 (a)(2)).

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development.

"Fund" means the Virginia Defective Drywall Correction and Restoration Assistance Fund.

"Innocent land owner" means a person who holds any title, security interest, or any other interest in residential real property and who acquired that interest after the installation of defective drywall occurred.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision of the Commonwealth created by the General Assembly or otherwise created pursuant to the laws of the Commonwealth or any combination of the foregoing.

2010, c. 820; 2012, c. 368.

§ 36-156.2. Virginia Defective Drywall Correction and Restoration Assistance Fund established; uses

A. There is hereby created and set apart a special, permanent, perpetual, and nonreverting fund to be known as the Virginia Defective Drywall Correction and Restoration Assistance Fund for the purposes of promoting the correction and restoration of residential property affected by the environmental problems attributable to defective drywall or overcoming obstacles to the remediation of such properties attributable to the real or presumed presence of defective drywall. The Fund shall consist of such sums that may be appropriated to the Fund by the General Assembly, sums from all receipts by the Fund from loans made by it, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants, awards, or other forms of financial assistance received by the Commonwealth.

B. The Authority shall administer and manage the Fund and establish the interest rates and repayment terms for loans made to eligible entities or individuals in accordance with a memorandum of agreement with the Department of Housing and Community Development. The Department of Housing and Community Development shall direct the distribution of loans or grants from the Fund to particular recipients based upon guidelines developed for this purpose. With approval from the Department of Housing and Community Development, the Authority may disperse moneys from the Fund for the payment of reasonable and necessary costs and expenses incurred in the administration and management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans for its management services.

C. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check and signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies, and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be made by the Authority upon written request signed by the Director of the Department of Housing and Community Development.

D. The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

E. The Department of Housing and Community Development may approve grants to local governments for the purposes of promoting the correction or restoration of residential real property and addressing environmental problems or obstacles to the correction or restoration of such properties. The grants may be used to pay the reasonable and necessary costs associated with the remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes or the stabilization or restoration of these structures or the demolition and removal of the existing structures or other work necessary to remediate or reuse the real property. The Department of Housing and Community Development may establish such terms and conditions as it deems appropriate and shall evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority shall disburse grants from the Fund in accordance with a written request from the Department of Housing and Community Development.

F. The Authority may make loans to local governments, public authorities, corporations, partnerships, or innocent landowners to finance or refinance the cost of any defective drywall restoration or remediation project for the purposes of promoting the restoration and redevelopment of residential real property and addressing real environmental problems or obstacles to reuse of these properties. The loans shall be used to pay the reasonable and necessary costs related to the restoration and redevelopment of residential real property for the remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes; stabilization or restoration of the affected properties; demolition and removal of existing structures; or other work necessary to remediate or reuse the real property.

The Department of Housing and Community Development shall designate in writing the recipient of each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

G. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the loan recipient payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions, and other information as it may deem necessary or convenient. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the entity receiving the loan covenant and perform any of the following:

1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government, and (iii) any amounts necessary to create and maintain any required reserve.

2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government.

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

4. Create and maintain other special funds as required by the Authority.

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title, and interest therein, to the Fund;

b. The procurement of insurance, guarantees, letters of credit, and other forms of collateral, security, liquidity arrangements, or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, for the purpose of financing, and the pledging of the revenues from such combined projects and undertakings to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

d. The maintenance, replacement, renewal, and repair of the project; and

e. The procurement of casualty and liability insurance.

6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time during the term of the loan.

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default.

H. All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings, and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

I. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

J. The Department of Housing and Community Development, through its Director, shall have the authority to access and release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the balance of the Fund. If the Department of Housing and Community Development, through its Director, requests a disbursement in an amount exceeding the current Fund balance, the disbursement shall require the written approval of the Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including, but not limited to, personnel, administrative, and equipment costs and expenses directly incurred by the Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the Department of Housing and Community Development.

K. The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

L. The Authority may, with the approval of the Department of Housing and Community Development, pledge, assign, or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199,

issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment, or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned, or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned, or transferred in trust as set forth above and any payments of principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment, or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned, or transferred until no longer required for such purpose by the terms of the pledge, assignment, or transfer.

M. The Department of Housing and Community shall develop guidelines governing the use of the Fund and including criteria for project eligibility that considers the extent to which a grant or loan will facilitate the use or reuse of the existing residential property, the extent to which a grant or loan will meet the needs of a recipient, the potential restoration of the property, the economic and environmental benefits to the surrounding community, and the extent of the perceived or real environmental contamination at the site.

2010, c. 820.

Chapter 11 - HOUSING REVITALIZATION ZONE ACT

§ 36-157. Short title

This chapter shall be known and may be cited as the "Housing Revitalization Zone Act."

2000, cc. 789, 795.

§ 36-158. Definitions

As used in this chapter:

"Based assessed value" means the assessed value of real estate within a housing revitalization zone as shown upon the records of the local assessing officer on January 1 of the year preceding the date of the designation of such zone.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth and subject to tax imposed under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

"Department" means the Department of Housing and Community Development.

"Fund" means the Housing Revitalization Zone Fund.

"Housing revitalization zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Housing unit" means any building, structure, or portion thereof, which is occupied as, or intended for occupancy as, a residence by one or more families.

"Local zone administrator" means the chief executive of the county, city, or town in which a housing revitalization zone is located, or his designee.

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § 36-165.

"Qualified owner occupant" means the owner of a housing unit who also uses the housing unit as the owner's residence, and who is designated as a qualified owner occupant pursuant to § 36-165.

2000, cc. 789, 795.

§ 36-159. Administration

The Department shall administer this chapter and shall have the following powers and duties:

1. To establish the process for determining what areas qualify as housing revitalization zones. Such criteria shall be the minimum required for implementation of the purpose of this chapter;

2. To monitor the implementation and operation of this chapter;

3. To conduct a continuing evaluation program of housing revitalization zones;

4. To assist counties, cities and towns in obtaining the reduction of regulations within housing revitalization zones; and

5. To administer and enforce the regulations promulgated by the Board of Housing and Community Development.

2000, cc. 789, 795.

§ 36-160. Housing revitalization zone designation

A. The governing body of any county, city or town may make written application to the Department to have an area or areas declared to be a housing revitalization zone. Such application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state incentives. Two or more adjacent jurisdictions may file a joint application for a housing revitalization zone lying in the jurisdictions submitting the application.

B. The Governor may approve, upon the recommendation of the Director of the Department, the designation of up to twenty areas as housing revitalization zones for a period of fifteen years. Any county, city, or town shall be eligible to apply for more than one housing revitalization zone

designation; however, each county, city, and town shall be limited to a total of two housing revitalization zones. Any such area shall consist of contiguous United States census tracts or any portion thereof in accordance with the most current United States Census or with the most current data from the local planning district commission. Any such area seeking designation as a housing revitalization zone shall also meet at least one of the following criteria: (i) have per capita income below eighty percent of the median per capita income for the planning district or (ii) have a residential vacancy rate that is at least 120 percent of the average vacancy rate for the planning district. No more than ten percent of a locality's land area may be in a single housing revitalization zone.

2000, cc. 789, 795.

§ 36-161. Expansion of housing revitalization zones

Upon designation of an area as a housing revitalization zone, the local governing body may make written application to the Department to expand the area of the housing revitalization zone. Such application for expansion shall be considered by the Department in accordance with the requirements of §§ 36-160 and 36-162 and such regulations of the Department as may be applicable.

2000, cc. 789, 795.

§ 36-162. Application review

A. The Department shall review each application upon receipt and shall secure any additional information that the Department deems necessary for the purpose of determining whether the area described in the application qualifies to be declared a housing revitalization zone.

B. The Department shall complete review of the application within sixty days of the last date designated for receipt of an application. After review of the applications, the Director shall recommend to the Governor within thirty days those applications with the greatest potential for accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact together with the reasons for the denial.

2000, cc. 789, 795.

§ 36-163. Sale of public land

Upon designation of an area as a housing revitalization zone, the Commonwealth and any units of local government that own any land within the housing revitalization zone may make available for sale all land within the housing revitalization zone not designated or targeted for some public use with the condition that it be developed.

2000, cc. 789, 795.

§ 36-164. Rules and regulations

Rules and regulations prescribing procedures effectuating the purpose of this chapter shall be promulgated by the Board of Housing and Community Development in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

2000, cc. 789, 795.

§ 36-165. Eligibility

A. Any business firm may be designated a "qualified business firm" for purposes of this chapter if it undertakes, within a housing revitalization zone, the eligible construction or rehabilitation of a housing unit as described under § 36-166.

B. Any individual may be designated as a "qualified owner occupant" for purposes of this chapter if the individual undertakes within a housing revitalization zone the eligible construction or rehabilitation, as described under § 36-166, of a housing unit and uses such unit as his residence.

C. After designation as a qualified business firm or as a qualified owner occupant pursuant to this section, each business firm or owner occupant in a housing revitalization zone shall submit a statement or other form as required by the Department requesting the grants provided under this chapter for qualified zone improvements. Such a statement shall be accompanied by an approved form supplied by the Department and completed by an independent certified public accountant licensed by the Commonwealth which states that the business firm or owner occupant met the definition of a "qualified business firm" or of a "qualified owner occupant" and continues to meet the requirements for eligibility as a qualified business firm or qualified owner occupant in effect at the time of its designation. A copy of the statement submitted by each business firm or owner occupant to the Department shall be forwarded to the local zone administrator.

D. The form referred to in subsection C of this section, prepared by an independent certified public accountant licensed by the Commonwealth, shall be prima facie evidence of the eligibility of a business firm or owner occupant for the purposes of this section, but the evidence of eligibility shall be subject to rebuttal. The Department may at its discretion require any business firm or owner occupant to provide supplemental information regarding the firm's or individual's eligibility (i) as a qualified business firm or qualified owner occupant or (ii) for the grants claimed pursuant to this chapter.

2000, cc. 789, 795.

§ 36-166. Housing revitalization zone grants

A. As used in this section:

"Qualified zone improvements" means the amount properly chargeable to a capital account for improvements to rehabilitate or undertake construction on real property during the applicable year within a housing revitalization zone, provided that the total amount of such improvements equals or exceeds (i) for a qualified business firm, an investment of $25,000 in rehabilitation expenses on each housing unit, $50,000 in new construction expenses for each single family housing unit, or $40,000 for each multifamily housing unit or (ii) for a qualified owner occupant, an investment of $12,500 in rehabilitation expenses or $50,000 in new construction expenses for each housing unit. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, plumbing, utility, or electrical improvements necessary to rehabilitate

or construct a building for residential use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. Qualified zone improvements shall also include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

Qualified zone improvements shall not include:

1. The cost of acquiring any real property or building.

2. (i) The cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; or (vii) outbuildings.

B. Beginning on and after July 1, 2000, a qualified business firm or qualified owner occupant may be allowed a grant from the Housing Revitalization Zone Fund for making qualified zone improvements. The grant amount shall not exceed thirty percent of the qualified zone improvements; however, in no event shall the total grants paid to a qualified business firm or qualified owner occupant exceed $50,000 per housing unit for qualified zone improvements made during the period in which such area of a county, city, or town is designated as a housing revitalization zone. Additionally, the total grants paid to a qualified business firm for a housing complex with five or more attached housing units may not exceed $150,000 over such period.

C. Local governments shall certify that the zone improvements made within housing revitalization zones within their jurisdictions comply with all locally adopted plans and ordinances.

2000, cc. 789, 795.

§ 36-167. Housing Revitalization Zone Fund established

There shall be set apart as a permanent and perpetual fund, known as the "Housing Revitalization Zone Fund," sums appropriated to the Fund by the General Assembly, all income from investments of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private. The Fund is created for the purpose of making grant payments to qualified business firms and qualified owner occupants. The Fund shall be administered and managed by the Virginia Housing Development Authority, subject to the right of the Department to direct the distribution of grants from the Fund for the payment of grants awarded by the Department to qualified business firms and qualified owner occupants.

2000, cc. 789, 795.

§ 36-168. Local incentives

A. In making an application for designation as a housing revitalization zone, the applying locality or localities may propose local tax incentives, including, but not limited to: (i) reduction of permit

fees; (ii) reduction of user fees; (iii) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221; and (iv) use of public funds to improve living conditions in housing revitalization zones such as code enforcement, public safety, and infrastructure improvements. The extent and duration of such incentive proposals shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as a housing revitalization zone, such application may also contain proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances as permitted under the Constitution of Virginia and the Code of Virginia; and (iv) other public incentives proposed in the locality's application, which shall be binding upon the locality upon designation of the housing revitalization zone.

B. A locality may establish eligibility criteria for local incentives for qualified business firms and qualified owner occupants that are the same as, or more stringent than, the criteria for eligibility for grants or other benefits provided by this chapter.

2000, cc. 789, 795.

§ 36-169. Review and termination of housing revitalization zone

A. Upon designation of an area as a housing revitalization zone, the proposals for regulatory flexibility, tax incentives and other public incentives specified in this chapter shall be binding upon the local governing body to the extent and for the period of time specified in the application for zone designation. If the local governing body is unable or unwilling to provide the regulatory flexibility, tax incentives or other public incentives as proposed in the application for zone designation, the housing revitalization zone shall terminate. Notwithstanding the provisions of § 36-166, qualified business firms and qualified owner occupants located in such housing revitalization zone shall be eligible to receive the grants provided by this chapter for a period of two years after the zone designation has terminated. No business firm or owner occupant may become a qualified business firm or qualified owner occupant after the date of zone termination. The governing body may amend its application with the approval of the Department, provided the governing body proposes an incentive equal to or superior to the unamended application.

B. The Department shall periodically review the effectiveness of the grant program and local incentives in increasing investment in each housing revitalization zone. If no business firms or owner occupants in a housing revitalization zone have qualified for grants provided pursuant to this chapter within a five-year period, the Department shall terminate that housing revitalization zone designation.

2000, cc. 789, 795; 2004, c. 577.

§ 36-170. Incremental revenues appropriated to housing revitalization zone

Any county, city, or town in which a housing revitalization zone is located shall, within ninety days of the designation of a housing revitalization zone within such county, city, or town, adopt

an ordinance providing that all or a specified percentage of the real estate taxes in such zone shall be assessed, collected, and allocated in the following manner:

1. The local assessing officer shall record in the appropriate books both the base assessed value and the current assessed value of the real estate in the zone.

2. Real estate taxes attributable to the lower of the current assessed value or base assessed value of real estate located in a housing revitalization zone shall be allocated by the treasurer or director of finance as they would be in the absence of such ordinance.

3. At least twenty-five percent of the increase in real estate taxes attributable to the difference between (i) the current assessed value of such property and (ii) the base assessed value of such property shall be appropriated by the county, city, or town within such housing revitalization zone to provide enhanced tax incentives, law-enforcement and other governmental services, including financing transportation projects, as may be appropriate to secure and to promote private investment in such zone. For purposes of determining such increase, additional revenues resulting from an increase in the tax rate on real estate after the designation of such housing revitalization zone shall not be included. Such ordinance shall provide that the appropriations mandated by this section shall be made for such increase in taxes in the county, city, or town's taxable year immediately following the payment of any grants under this chapter. If the grants authorized by this section are not paid to qualified business firms or qualified owner occupants for a particular calendar year, such county, city, or town shall not be required to appropriate such increase in taxes in its immediately following taxable year.

2000, cc. 789, 795.