**Richmond Association of**

**REALTORS®**

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**2020 Legislative Package**

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**2020 New Positions**

**Comprehensive Review of the Property Owners’ Association Act**

**Issue:** The last comprehensive review of the Property Owners’ Association Act was completed in 2008. Despite the changes, the REALTORS® Government Affairs team has sought additional amendments to the Act nearly every year. Solutions have had limited affect.

**Position:** The Richmond Association of REALTORS® supports a comprehensive review of the Property Owners’ Association Act to better serve the needs of all parties involved.

**POA Act: DPOR Maintained Registry of Association By-Laws**

**Issue:** One of the issues our members face with the improper receipt of a disclosure packet is transparency around an association’s by-laws. Homebuyers will make an offer on a property, potentially going under contract, without general knowledge of an association’s by-laws.

**Position:** RAR supports the creation of a searchable, DPOR maintained registry of Property Owner Association by-laws. All POAs would be required to submitted updated by-laws annually.

**Tax Delinquent Sales Process**

## Issue: In order for a locality to initiate a judicial sale for tax delinquent real estate, the property in question must not only be tax delinquent and declared blighted, but it must be assessed at less than $100,000 according to Virginia Code §58.1-3965. This presents a barrier to localities with higher property values. For example, Chesterfield County contains several properties that are tax delinquent, been declared blighted, but because the land itself is worth over $100,000, the County cannot initiate a judicial tax sale. As a result, the properties continue to deteriorate, negatively affecting surrounding property values and damaging the character of the neighborhood.

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## Position: The Richmond Association of REALTORS® supports legislation that would raise the assessment cap to $150,000, thereby allowing localities to fully utilize this important spot blight abatement tool.

**Creation of Virginia LIHTC Program**

**Issue:** As building costs continue to escalate, it is becoming increasingly difficult for a developer to create housing affordable to median wage earners. This applies to both single and multifamily units. In order to help create a more affordable product, builders typically layer local, state, and federal incentive programs such as local rehabilitation tax abatements, state Historic Tax Credits, and federal Low Income Housing Tax Credits. While these programs have aided in the creation of more units, development has not kept pace with demand.

**Position:** The Richmond Association of REALTORS(R) supports the creation of a state run program that mimics the federal Low Income Housing Tax Credit program.

**Standing Positions**

**Commerce**

**Economic Development Incentives**

**Issue:** Virginia often finds itself in a highly competitive battle with other states in attracting industry and jobs to the Commonwealth. To lure desirable industries, other states offer incentives.

**Position:** The Richmond Association of Realtors supports the philosophy of providing relocating businesses as well as existing businesses with fiscally responsible incentive packages.

**Enterprise Zones**

**Issue:** Enterprise zones are a state tool designed to encourage economic activity in underperforming urban areas.

**Discussion:** The State Enterprise Zone Program seeks to facilitate neighborhood revitalization as well as provide incentives for small businesses to create jobs.

**Position:** The Richmond Association of Realtors supports the expansion and enhancement of the state's Enterprise Zone Program.

**General**

**Mandatory Non-Real Estate Licensee Disclosure  
Issue:** Title 54.1-2106.1 states that no one shall act as a real estate salesperson without a salesperson’s license from the Real Estate Board. Licenses are granted by the Board to individuals who have completed specific educational requirements and maintained by the licensee completing additional continuing education requirements.

**Position:** The Richmond Association of Realtors supports legislation that would require individuals providing any real estate services to disclose their licensure status to potential buyers.

**POA/COA: Clarifying Delivery of Disclosure Packet**

**Issue:** §55-509.5 of the POA Act and §55-79.97 of the COA Act address the delivery of a property’s disclosure packet. As written currently, neither section speaks to proper procedure should an incomplete packet be delivered to the buyer or buyer agent. Different Courts around the Commonwealth have interpreted current language differently as well. A case out of Tidewater that states that an incomplete packet means delivery of the packet has not occurred, thus until a completed packet is delivered, the purchaser still retains a right of rescission. A new case out of Northern Virginia essentially states the opposite: that the delivery of an incomplete packet starts the three day right of rescission.

**Position:** The Richmond Association of Realtors supports legislation in both sections that clarifies what constitutes as a delivered packet, specifically addressing the delivery of a partial or incomplete packet.

**POA/COA: Holidays and the Three Day Right of Rescission**

**Issue:** The Property Owner and Condo Association Acts provide a potential buyer with a three day period to cancel a contract. While in theory, three days seems like a reasonable amount of time and it often is; however, in practice, buyer agents often run into issues when faced with holiday weekends, such as Memorial or Labor Day. Clients, like the majority of the public, typically take trips or spend time with family on those days and as a result, can be difficult or impossible to reach.

**Position:** To provide buyers with the proper opportunity to exercise their three day right of rescission, RAR proposes adding language to the POA and COA Acts that blackout federally designated holidays from the three-day period. For example, a disclosure packet delivered at 5pm on the Friday before Memorial Day would have a rescission period ending on Tuesday at 5pm.

**POA/COA: Requiring Online Association Documents**

**Issue:** Sections 55-509.4 and §55-79.97 of the Code of Virginia require that a seller is to obtain from the POA/Condo association an association disclosure packet or resale certificate and provide it to the purchasers, if that lot or unit is located within a development that is subject to the Virginia Property Owner’s Association Act or the Virginia Condominium Act. The packet can be delivered to the authorized agent via different methods either physically or electronically.

**Position:** To better inform potential buyers and their Realtors, The Richmond Association of Realtors proposes requiring professionally managed property and condo owner associations to promulgate the association’s restrictions, covenants, bylaws, and meeting minutes online.

**POA/COA: Community Development Authorities**

**Issue:** Local governments have the authority under the Virginia and Waste Authorities Act to create community development authorities (“CDA”) for the purpose of financing, designing and constructing, certain infrastructure improvements. Homeowners within a CDA may be subject to pay rates, fees or charges (“assessments”) for the use of, or for the services furnished by the CDA.

Virginia Code §15.2-5157 states that the local governing body, upon approving the resolution or ordinance creating the district, shall direct that a copy of the resolution or ordinance be recorded in the land records of the circuit court for the locality in which the district is located for each parcel included in the district and be noted on the land books of the locality. Once the ordinance or resolution is recorded in the land records, notification of the community development authority should be made to a prospective homeowner by way of the title search process and noted in the title commitment.

There have been instances where individuals purchased homes within a CDA, unaware of the current or future assessment on their property. Residents of a development in Chesterfield County have been notified by County staff that they are responsible for paying special assessments, up to $8000 per lot, to cover costs associated with a CDA. The residents were unaware of the assessments when they purchased their homes. Residents are not only faced with paying the unexpected assessment, but they are concerned that the assessment will decrease the value of their home and make it less desirable for resale in the future. While CDA’s have been added to the Virginia Residential Property Disclosure form, many homeowners are becoming aware of the fees associated with a CDA post-closing.

**Position:** The Richmond Association of REALTORS® supports legislation to require the disclosure of community development authorities, and any current or potential special assessments related to these authorities, in the resale certificate for condo units and the disclosure packet for lots in property owners associations.

**Radon**

**Issue:** Radon is a naturally occurring element found in the soil across Virginia and is also a known carcinogen. The Commonwealth of Virginia does not currently license Radon Inspectors.

**Position:** Because of the serious nature of radon induced lung cancer, RAR supports the state licensing of radon inspectors as a consumer protection measure.

**State Funding for Education**

**Issue:** A 2015 JLARC study found that while Virginia is close to the national average in per student spending on K-12 education, local funds make up the majority of school division budgets. In fact, Virginia localities pay the highest share of total K-12 spending in the Southeast region. During the Great Recession, school divisions postponed facility maintenance and bus replacements to reduce spending without harming instructional quality. Unfortunately, that same JLARC study discovered that those differed maintenance projects are now affecting long term efficiency and effectiveness of student instruction. Across Virginia, the number of children in public school has continued to rise over the past 20 years, but funding has declined by 7% since 2005.

**Position:** The Richmond Association of Realtors supports efforts to increase funding for public schools. Not only do we know that school quality has a direct effect on property value, but we believe that in the long run, proper educational funding saves the Commonwealth money by providing young citizens an equal opportunity to become successful adults and productive members of the economy.

**Unlicensed Real Estate Activity**

**Issue:** While the practice of real estate without a license is illegal in the Commonwealth of Virginia, illicit activity still occurs. Consumers are taken advantage of and the reputation of real estate agents is damaged. Unfortunately, there is little to no recourse for harmed parties in current law.

**Position:** To better protect homebuyers and licensed real estate agents, the Richmond Association of Realtors supports legislation adding more robust penalties for those practicing real estate without a license.

**Land Use and Property Rights**

**Adequate Public Facilities (APF) Ordinances**

**Issue:** Adequate Public Facilities (APF) ordinances enable local governments to defer indefinitely or to deny a rezoning proposal based on the locality’s assessment that existing infrastructure is “inadequate” to support new development. Under these proposals, there is no obligation on the part of local governments to provide the needed infrastructure.

**Discussion:**  Virginia Court precedent has established that the provision of roads, schools, parks and other public facilities is primarily a responsibility of government. An APF ordinance used as a no-growth tool would severely damage the real estate industry.

**Position:**  RAR supports sound local planning principles and an appropriately planned and funded Capital Improvement Plan. RAR opposes legislation that would require the existence of adequate public facilities prior to, or concurrent with, the governmental approval of a particular project or planned development.

**Cash Proffers for New Construction**

**Issue:** Local governments impose cash proffers--taxes or surcharges--upon residential lots at the time of rezoning in order to finance local infrastructure.

**Discussion:** Cash proffers artificially increase the cost of housing. Unlike other local revenue sources, there are no statutory caps or restrictions on the rate of increase.

**Position:** The Richmond Association of Realtors opposes cash proffers. The Association supports equitable, broad-based methods to fund local infrastructure.

**Chesapeake Bay Preservation Act**

**Issue:** The Chesapeake Bay Preservation Act (CBPA) outlines water quality protection measures for the Bay and its tributaries.

**Discussion:** The Act requires local governments to incorporate into their local comprehensive plans, zoning ordinances, subdivision ordinances and erosion and settlement control ordinances, water quality protection measures which define and protect environmentally sensitive lands.

**Position:** The Richmond Association of Realtors is extremely concerned about achieving a balance between a healthy Chesapeake Bay and a strong, viable economy in Virginia. Nevertheless, RAR opposes any unreasonable efforts to expand the CBPA beyond its already existing limits. RAR will continue to support, however, reasonable and fair regulations that promote a balance between economic growth, the protection of private property rights and the preservation of the environment, while opposing any initiatives that exceed these criteria.

**Dillon Rule**

**Issue:** Virginia is considered a “Dillon Rule” state, which means that local governments are considered political subdivisions of the state and therefore possess only those powers that the state explicitly grants them.

**Discussion:** The Dillon Rule serves as the foundation for Virginia’s excellent business climate. Because of this important doctrine, businesses know that the laws and regulations will vary little between different jurisdictions.

**Position:** The Richmond Association of Realtors opposes any efforts to weaken the Dillon Rule doctrine or to lessen local accountability with regard to land use regulation.

**Short Term Rentals  
Issue:** Attempts by localities to limit or outright ban short term rentals in a private home infringe upon a citizen’s private property rights.

**Position:** RAR supports the rights of private citizens to use their property as they see fit, provided said use complies with current zoning ordinances.

**Local Planning**

**Affordable Dwelling Unit Ordinance**

**Issue:** Title 15.2-2304 provides the localities of Loudoun, Alexandria, and Fairfax with broad authority to establish affordable dwelling unit ordinances. All other localities are subject to §15.2-2305 which provides strict guidance for the locality attempting to establish an ADU program. This strict guidance makes it difficult to craft an effective ADU ordinance that needs to take market conditions and land use patterns in account while working to preserve neighborhood integrity.

**Position:** The Richmond Association of Realtors supports removing the locality specific language in §15.2-2304 and replacing it with “any locality.”

**Funding of Local Infrastructure Needs**

**Issue:** The challenge of how to pay for growth often receives attention during General Assembly sessions.

**Discussion:** To pay for infrastructure, local governments often seek to impose various taxes upon the housing industry such as impact fees, transfer taxes, etc. These proposals would increase the cost of housing as well as diminish the stock of available affordable housing.

**Position:** The Richmond Association of Realtors supports broad-based methods to fund local infrastructure needs.

**Local Real Estate Sign Ordinances**

**Issue:**  Sign ordinances in several localities prohibit temporary, off-site signs, such as those commonly used to advertise open houses.

**Discussion:** Temporary, off-site signs placed along the roadway and private property are valuable in directing the public to a property which is listed for sale or lease.

## Position: The Richmond Association of Realtors opposes efforts to impose unreasonable restrictions on the use of temporary directional signs located outside of the VDOT right-of-way.

**Regional Cooperation**

**Issue:** Regional cooperation can provide essential services (e.g. water, sewer, waste management, transportation) to citizens at reduced costs by eliminating duplication of effort and bureaucracy. Regional cooperation is critical to sustain and to enhance economic development efforts.

**Position:** The Richmond Association of Realtors encourages all local governments to explore the cost-saving potential of regional cooperation. The General Assembly should continue to develop incentives for local governments to join together in regional, cooperative efforts to provide services to citizens and to enhance the region’s economic competitiveness.

**Virginia Fair Housing Law Amendment**

**Issue:** The Virginia Fair Housing Law prohibits individuals from discriminating against each other on the basis of race, color, religion, national origin, sex, elderliness, familial status, and handicap status. Currently, the Code lacks language specifically addressing governmental discrimination against any of the above protected classes in the development permitting application process.

**Position:** The Richmond Association of Realtors believes that an individual’s or family’s income level should not be a barrier to living in communities of opportunity and that localities should be unable to use the zoning process to prevent the creation of affordable housing. RAR supports legislation adding language to the Virginia Fair Housing Law that prohibits localities and their employees from using land use ordinances and housing development permitting processes to keep a housing product from being developed because it contains or is expected to contain affordable housing units or occupancy by families or individuals whose incomes are at or below 80% of area median income.

**Zoning Practices/Comprehensive Plans**

**Issue:** Under Virginia law, local governments have the primary responsibility for regulating local land use matters.

**Discussion:** Pursuant to the Code of Virginia, localities must adopt a comprehensive plan to serve as a roadmap for future development.

**Position:** RAR supports efforts to strengthen the accountability of local governments as it relates to their comprehensive plans and zoning ordinances. RAR also favors more stringent local comprehensive plan requirements that strengthen the designation of affordable housing areas and result in better planning for a community’s long-term housing needs.

**Taxation/Finance**

**Expand Enabling Legislation Establishing Conservation, Redevelopment Districts**

**Issue:** Currently, there are no tax abatements programs offered directly for newly constructed affordable housing, but there are abatements available via housing authority established Conservation and Redevelopment Districts for redevelopment that includes affordable housing. This means that local governments without a housing authority are unable to utilize Conservation and Redevelopment Districts to encourage the construction of affordable housing.

**Position:** The Richmond Association of Realtors supports amending state code to allow local governments without a housing authority to establish these districts.

**Independent Contractors**

**Issue:** Real estate sales agents have a unique statutory provision (Internal Revenue Code Section 3508) that provides clear directives about how a real estate broker may classify his/her sales agents as independent contractors. Brokers and sales agents can determine with certainty what their work arrangements are and can thereby ascertain the role of each with respect to payroll taxes and benefits.

**Position:** The Richmond Association of Realtors opposes any erosion of the statutory protections in Section 3508.

**Historic Rehabilitation Tax Credits**

**Issue**:  State financed Historic Rehabilitation Tax Credits facilitate development in older neighborhoods, while simultaneously preserving the historic nature of the area. They also help remediate blight and encourage additional economic investment. Since their inception, these tax credits have generated approximately $4 billion worth of economic activity across the Commonwealth.

**Position**: The Richmond Association of Realtors supports the preservation of Historic Rehabilitation Tax credits at the state level and opposes any efforts to diminish them. While the credits require upfront investment from the Commonwealth, they pay for themselves in the long term via increases in property values, sales taxes, and economic activity generated in a real estate transaction.

**Real Estate Transfer/Recordation Taxes**

**Issue:** Both the state and local governments levy real estate recordation taxes, the rates of which are outlined in the Code of Virginia. These fees are often targeted as potential sources for additional revenue.

**Discussion:** Transfer taxes are out-of-pocket costs generally paid by the buyer at the time of settlement. An increase in statutory transfer taxes or flat fees associated with the transfer of real estate diminishes the ability of families to purchase a home.

**Position:** The Richmond Association of Realtors opposes any increase in transfer taxes or recordation fees.

**Real Property Taxes**

**Issue:** Local governments determine the rate of and levy real estate taxes. The Virginia Constitution requires local governments to assess properties at fair market value.

**Position:** The Richmond Association of Realtors supports broad-based funding measures that would lessen local governments’ dependence on the real estate tax. RAR believes in expanded real estate tax relief through additional means testing via the existing tools in the Code of Virginia.

**Tax Credit Market Place**

**Issue:** The Department of Historic Resources’ current map of designated Historic Districts excludes large areas containing historic properties in the City of Richmond. Property owners in these areas are ineligible for historic tax credits, and as a result, owners have no equal incentive to maintain their properties, leading to urban blight and the loss of historic properties to neglect.

**Position:** The Richmond Association of Realtors proposes creating a “tax credit marketplace” for owners in homes 50 years or older that are excluded from current DHR maps. Owners of properties that meet certain criteria should be provided similar incentives to preserve the historic character of their residences; however, many of these properties are owned by citizens who are unable to take advantage traditional tax credits. Therefore, the creation of a Tax Credit Marketplace would allow these property owners to sell tax credits gained from property improvements and maintenance to buyers who can use the credits in a traditional fashion.

**Transportation Funding**

**Issue:** Despite the passage in 2013 of legislation to fund transportation needs, legislators will continue to seek additional solutions for ongoing transportation needs. Some legislators have attempted to transfer road maintenance costs to local governments.

**Position:** The Richmond Association of Realtors opposes shifting statewide road construction and maintenance responsibility to local governments without their consent. RAR supports dedicated, broad based, revenue sources for transportation.