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SENATE BILL NO. 1094

Offered January 14, 2009

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A BILL to amend and reenact §§ 15.2-906, 15.2-958.1, 15.2-1115, 36-3, 36-49.1:1, 36-105, 48-5, 58.1-3965, and 58.1-3969 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 15.2-907.1, relating to derelict buildings and structures.

Patrons—Locke, Lucas, Miller, Y.B. and Whipple

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-906, 15.2-958.1, 15.2-1115, 36-3, 36-49.1:1, 36-105, 48-5, 58.1-3965, and 58.1-3969 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-907.1 as follows:

§ 15.2-906. Authority to require removal, repair, etc., of buildings and other structures.

Any locality may, by ordinance, provide that:

1. The owners of property therein, shall at such time or times as the governing body may prescribe, remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of such locality;

2. The locality through its own agents or employees may remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of such locality, if the owner and lienholder of such property, after reasonable notice and a reasonable time to do so, has failed to remove, repair, or secure the building, wall or other structure. *In addition, a building shall be deemed to endanger the public health and safety if for a continuous period in excess of six months, it has been (i) vacant, (ii) boarded up, and (iii) not lawfully connected to electric service from a utility service provider or not lawfully connected to water or sewer service from a utility service provider.* For purposes of this section, repair may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings. For purposes of this section, reasonable notice includes a written notice (i) mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner and (ii) published once a week for two successive weeks in a newspaper having general circulation in the locality. No action shall be taken by the locality to remove, repair, or secure any building, wall, or other structure for at least 30 days following the later of the return of the receipt or newspaper publication, except that the locality may take action to prevent unauthorized access to the building within seven days of such notice if the structure is deemed to pose a significant threat to public safety and such fact is stated in the notice;

3. In the event the locality, through its own agents or employees, removes, repairs, or secures any building, wall, or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected;

4. Every charge authorized by this section or § 15.2-900 with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes 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. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed; and

5. A locality may prescribe civil penalties, not to exceed a total of \$1,000, for violations of any ordinance adopted pursuant to this section.

§ 15.2-907.1. *Authority to require removal, repair, etc., of buildings that are declared to be derelict.*

Any locality that has a real estate tax abatement program in accordance with this section may, by ordinance, provide that:

1. *The owners of property therein shall at such time or times as the governing body may prescribe submit a plan to demolish or renovate any building that has been declared a "derelict building." For purposes of this section, "derelict building" shall mean a residential or nonresidential building or structure, whether or not construction has been completed, that might endanger the public's health, safety, or welfare and for a continuous period in excess of six months, it has been (i) vacant, (ii) boarded up, and (iii) not lawfully connected to electric service from a utility service provider or not*

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59 lawfully connected to water or sewer service from a utility service provider.

60 2. If a building qualifies as a derelict building pursuant to the ordinance, the locality shall notify the
61 owner of the derelict building that the owner is required to submit to the locality a plan, within 90
62 days, to demolish or renovate the building to address the items that endanger the public's health, safety,
63 or welfare as listed in a written notification provided by the locality. Such plan may be on a form
64 developed by the locality and shall include a proposed time within which the plan will be commenced
65 and completed. The plan may include one or more adjacent properties, whether or not all of such
66 properties may have been declared derelict buildings. The plan shall be subject to approval by the
67 locality. The locality shall deliver the written notice to the address listed on the real estate tax
68 assessment records of the locality. Written notice sent by first-class mail, with the locality obtaining a
69 U.S. Postal Service Certificate of Mailing shall constitute delivery pursuant to this section.

70 3. If a locality delivers written notice and the owner of the derelict building has not submitted a plan
71 to the locality within 90 days as provided in subdivision 2, the locality may exercise such remedies as
72 provided in this section or as otherwise provided by law.

73 4. The owner of a building may apply to the locality and request that such building be declared a
74 derelict building for purposes of this section.

75 5. The locality, upon receipt of the plan to demolish or renovate the building, at the owner's request,
76 shall meet with the owner submitting the plan and provide information to the owner on the land use and
77 permitting requirements for demolition or renovation.

78 6. If the property owner's plan is to demolish the derelict building, the building permit application of
79 such owner shall be expedited. If the owner has completed the demolition within 90 days of the date of
80 the building permit issuance, the locality shall refund any building and demolition permit fees. This
81 section shall not supersede any ordinance adopted pursuant to § 15.2-2306 relative to historic districts.

82 7. If the property owner's plan is to renovate the derelict building, and no rezoning is required for
83 the owner's intended use of the property, the site plan or subdivision application and the building
84 permit, as applicable, shall be expedited. The site plan or subdivision fees may be refunded, all or in
85 part, but in no event shall the site plan or subdivision fees exceed the lesser of 50 percent of the
86 standard fees established by the ordinance for site plan or subdivision applications for the proposed use
87 of the property, or \$5,000 per property. The building permit fees may be refunded, all or in part, but in
88 no event shall the building permit fees exceed the lesser of 50 percent of the standard fees established
89 by the ordinance for building permit applications for the proposed use of the property, or \$5,000 per
90 property.

91 8. Prior to commencement of a plan to demolish or renovate the derelict building, at the request of
92 the property owner, the real estate assessor shall make an assessment of the property in its current
93 derelict condition. On the building permit application, the owner shall declare the costs of demolition,
94 or the costs of materials and labor to complete the renovation. At the request of the property owner,
95 after demolition or renovation of the derelict building, the real estate assessor shall reflect the fair
96 market value of the demolition costs or the fair market value of the renovation improvements, and
97 reflect such value in the real estate tax assessment records. The real estate tax on an amount equal to
98 the costs of demolition or an amount equal to the increase in the fair market value of the renovations
99 shall be abated for a period of not less than 15 years, and is transferable with the property. However, if
100 the locality has an existing tax abatement program for less than 15 years, as of July 1, 2009, the
101 locality may provide for a tax abatement period of not less than five years.

102 9. Notwithstanding the provisions of this section, the locality may proceed to make repairs and
103 secure the building under § 15.2-906, or the locality may proceed to abate or remove a nuisance under
104 § 15.2-900. In addition, the locality may exercise such remedies as may exist under the Uniform
105 Statewide Building Code and may exercise such other remedies available under general and special law.

106 § 15.2-958.1. Sale of certain property in localities.

107 A. ~~The City of Richmond~~ A locality may by ordinance provide for the sale of property for the
108 nominal amount of one dollar if such property (i) has been acquired in accordance with § 58.1-3970 or
109 § 58.1-3970.1 or (ii) has been declared a blighted structure and has been acquired by the ~~city~~ locality in
110 accordance with § 36-49.1:1.

111 B. If the ~~city~~locality sells a property acquired under subsection A, ~~the city~~it shall require any
112 purchaser by covenants in the deed or other security instrument to (i) begin repair or renovation of the
113 property within six months of purchase and (ii) complete all repairs or renovations necessary to bring
114 the property into compliance with the local building code within a period not to exceed two years of the
115 purchase. The ~~city~~locality may include any additional reasonable conditions it deems appropriate in order
116 to carry out the intent of this section and assure that the property is repaired or renovated in accordance
117 with applicable codes.

118 C. A "blighted structure" means a structure as defined in ~~§ 36-49~~. Notwithstanding any other
119 provisions of law, such ~~city~~ may exercise within its boundaries any spot blight abatement procedures set
120 forth in ~~§ 36-49.1:1~~. The owner shall have the opportunity to take corrective action or present a

reasonable plan to do so in accordance with such section.

§ 15.2-1115. Abatement or removal of nuisances.

A. A ~~municipal corporation~~ *locality* may compel the abatement or removal of all nuisances, including but not limited to the removal of weeds from private and public property and snow from sidewalks; the covering or removal of offensive, unwholesome, unsanitary or unhealthy substances allowed to accumulate in or on any place or premises; the filling in to the street level, fencing or protection by other means, of the portion of any lot adjacent to a street where the difference in level between the lot and the street constitutes a danger to life and limb; the raising or draining of grounds subject to be covered by stagnant water; and the razing or repair of all unsafe, dangerous or unsanitary public or private buildings, walls or structures which constitute a menace to the health and safety of the occupants thereof or the public. If after such reasonable notice as the ~~municipal corporation~~ *locality* may prescribe the owner or owners, occupant or occupants of the property or premises affected by the provisions of this section shall fail to abate or obviate the condition or nuisance, the ~~municipal corporation~~ *locality* may do so and charge and collect the cost thereof from the owner or owners, occupant or occupants of the property affected in any manner provided by law for the collection of state or local taxes.

B. Every charge authorized by this section in excess of \$200 which has been assessed against the owner of any such property and which remains unpaid shall constitute a lien against such property. Such liens shall have the same priority as other unpaid local taxes and shall be 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. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

§ 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.

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

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

"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.

§ 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 (i) may request the local planning commission to conduct a public hearing and make findings and recommendations that shall be reported to the governing body of the locality to declare the property as blighted, which declaration shall be by ordinance adopted by the governing body concerning the repair or other disposition of the property in question and (ii) in the event a public hearing is scheduled, shall prepare a written spot blight abatement plan for the repair or other disposition of the property.

D. No spot blight abatement 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 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. Not less than three weeks prior to the date of the public hearing before the planning commission, the commission shall provide by regular and certified mail, notice of such hearing to (i) the owner of the blighted property or the agent designated by him for receipt of service of notices concerning the payment of real estate taxes within the locality; (ii) the abutting property owners in each direction, including those property owners immediately across the street or road from the property; and (iii) the representative neighborhood association, if any, for the immediate area. The notice shall include the plan for the intended repair or other disposition of the property. The notice of the public hearing shall be published at least twice, with not less than six days elapsing between the first and second publication in a newspaper published or having general circulation in the locality in which the property is located. The notice also shall be posted on the property. The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than six days nor more than 21 days after the second publication.

E. The planning commission shall determine whether:

1. The property is blighted;
2. The owner has failed to cure the blight or present a reasonable plan to do so;
3. The plan for the repair or other disposition of the property is in accordance with the locally adopted comprehensive plan, zoning ordinances, and other applicable land use regulations; and
4. The property is located within an area listed on the National Register of Historic Places. In such instances, the planning commission shall consult with the locally established architectural review board, if any, regarding the proposed repair or other disposition of the property by the authority or governing body.

F. The planning commission shall report its findings and recommendations concerning the property to the governing body. The governing body, upon receipt of such findings and recommendations, may, after an advertised public hearing, affirm, modify, or reject the planning commission's findings and recommendations. 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 applicable law.

GE. 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 § 6.1-330.53, beginning on the date the repairs are completed through the date on which the lien is paid. The lien authorized by this subsection shall be filed in the circuit court where the property is located and shall be subordinate to any prior liens of record 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.

HF. 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.

IG. 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 § 6.1-330.53, beginning on the date the removal or abatement is completed through the date on which the lien is paid. *Nothing herein shall be construed to limit the authority of a locality to abate or remove a nuisance in accordance with § 15.2-900 or to exercise such other remedies under law.*

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.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators.

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. Appeals from the local building department concerning application of the Building Code or refusal to grant a modification to the provisions of the Building Code shall first lie 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 which is situated within their respective boundaries. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

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.

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, or occupant, or tenant of a residential dwelling unit or a nearby residential dwelling unit, any nearby building or structure, and the owner, occupant, or tenant of the residential dwelling unit, 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 dwelling building or structure, the local building official or his agent may present sworn testimony to 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 dwelling building or structure for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject dwelling 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%, the pending enforcement action shall continue to be enforced against the owner.

D. Elevator inspections. The local governing body shall, however, inspect and enforce the Building

Code for elevators, 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.

§ 48-5. Fines and costs; judgment of abatement.

Upon the trial of any such presentment the person or persons who have created, caused or permitted the continuation of ~~such any~~ nuisance, if found guilty, shall be *ordered to either abate said nuisance or to reimburse the locality for all costs of removal and abatement of said nuisance, if the locality has abated the nuisance pursuant to § 15.2-900, and further may be fined, in the discretion of the jury, not more than \$10,000 \$25,000, in addition to other remedies available under the law; and upon such verdict the judgment of the court shall be for the amount of fine imposed and the costs of such proceeding, and also that such nuisance be forthwith removed and abated.*

§ 58.1-3965. When land may be sold for delinquent taxes; notice of sale; owner's right of redemption.

A. When any taxes on any real estate in a ~~county, city or town~~ locality are delinquent on December 31 following the second anniversary of the date on which such taxes have become due, or, in the case of real property upon which is situated (i) any structure that has been condemned by the local building official pursuant to applicable law or ordinance; (ii) *any nuisance as that term is defined in § 15.2-900;* (iii) *any derelict building as that term is defined in § 15.2-907.1; or (iv) any property that has been declared to be blighted as that term is defined in § 36-49.1:1,* the first anniversary of the date on which such taxes have become due, ~~or, in the case of real estate which is deemed abandoned as provided herein, and the taxes on any real estate are delinquent on December 31 following the second anniversary of the date on which such taxes have become due,~~ such real estate may be sold for the purpose of collecting all delinquent taxes on such property.

Upon a finding by the court, on real estate with an assessed value of ~~\$50,000~~ \$100,000 or less in any ~~county, city or town~~ locality, that (i) any taxes on such real estate are delinquent on December 31 following the ~~second~~ first anniversary of the date on which such taxes have become due and (a) the land or structure on it has been declared a nuisance by the local code official due to unresolved code violations; (b) the owner of record of the property has failed to abate the nuisance after proper statutory notice has been given by code enforcement officials; and (c) the locality has taken steps to abate the nuisance conditions and placed a lien on the property for the cost of such abatement, and the lien has remained unpaid; or (ii) any taxes on such real estate are delinquent on December 31 following the fifth anniversary of the date on which such taxes have become due or (ii) there is a lien on such real estate pursuant to § 15.2-900, 15.2-906, 15.2-907, 15.2-907.1, 15.2-908.1, or 36-49.1:1, which lien remains unpaid on December 31 following the first anniversary of the date on which such lien was recorded, the property shall be deemed abandoned and subject to sale by public auction pursuant to proper notice under this subsection.

The officer charged with the duty of collecting taxes for the locality wherein the real property lies shall, at least 30 days prior to instituting any judicial proceeding pursuant to this section, send a notice to (i) the last known address of the property owner as such owner and address appear in the records of the treasurer, (ii) the property address if the property address is different from the owner's address and if the real estate is listed with the post office by a numbered and named street address and (iii) the last known address of any trustee under any deed of trust, mortgagee under any mortgage and any other lien creditor, if such trustee, mortgagee or lien creditor is not otherwise made a party defendant under § 58.1-3967, advising such property owner, trustee, mortgagee or other lien creditor of the delinquency and the officer's intention to take action. Such officer shall also cause to be published at least once a list of real estate which will be offered for sale under the provisions of this article in a newspaper of general circulation in the locality, at least 30 days prior to the date on which judicial proceedings under the provisions of this article are to be commenced.

The pro rata cost of such publication shall become a part of the tax and together with all other costs, including reasonable attorneys' fees set by the court and the costs of any title examination conducted in order to comply with the notice requirements imposed by this section, shall be collected if payment is made by the owner in redemption of the real property described therein whether or not court proceedings have been initiated. A notice substantially in the following form shall be sufficient:

Notice

Judicial Sale of Real Property

On (date) proceedings will be commenced under the authority of § 58.1-3965 et seq. of the Code of Virginia to sell the following parcels for payment of delinquent taxes:

(description of properties)

B. The owner of any property listed may redeem it at any time before the date of the sale by paying all accumulated taxes, penalties, reasonable attorneys' fees, interest and costs thereon, including the pro rata cost of publication hereunder. Partial payment of delinquent taxes, penalties, reasonable attorneys' fees, interest or costs shall not be sufficient to redeem the property, and shall not operate to suspend,

invalidate or make moot any action for judicial sale brought pursuant to this article.

C. Notwithstanding the provisions of subsection B and of § 58.1-3954, the treasurer or other officer responsible for collecting taxes may suspend any action for sale of the property commenced pursuant to this article upon entering into an agreement with the owner of the real property for the payment of all delinquent amounts in installments over a period which is reasonable under the circumstances, but in no event shall exceed 24 months. Any such agreement shall be secured by the lien of the locality pursuant to § 58.1-3340.

D. During the pendency of any installment agreement permitted under subsection C, any proceeding for a sale previously commenced shall not abate, but shall be continued on the docket of the court in which such action is pending. It shall be the duty of the treasurer or other officer responsible for collecting taxes to promptly notify the clerk of such court when obligations arising under such an installment agreement have been fully satisfied. Upon the receipt of such notice, the clerk shall cause the action to be stricken from the docket.

E. In the event the owner of the property or other responsible person defaults upon obligations arising under an installment agreement permitted by subsection C, or during the term of any installment agreement, defaults on any current obligation as it becomes due, such agreement shall be voidable by the treasurer or other officer responsible for collecting taxes upon 15 days' written notice to the signatories of such agreement irrespective of the amount remaining due. Any action for the sale previously commenced pursuant to this article may proceed without any requirement that the notice or advertisement required by subsection A, which had previously been made with respect to such property, be repeated. No owner of property which has been the subject of a defaulted installment agreement shall be eligible to enter into a second installment agreement with respect to the same property within three years of such default.

F. Any corporate, partnership or limited liability officer, as those terms are defined in § 58.1-1813, who willfully fails to pay any tax being enforced by this section, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax not paid, to be assessed and collected in the same manner as such taxes are assessed and collected.

§ 58.1-3969. Order of reference; appointment of special commissioner to make sale; costs; attorney fees.

The court shall have the option, for good cause shown, to refer the case to a commissioner in chancery for hearing and report, in which case, the order of reference shall be to a commissioner in chancery or special master other than the attorney (or any attorney practicing in the same firm as the attorney) employed to subject the real estate to the lien of any taxes. Upon (i) receipt of proper service of process on all parties defendant, a written real estate title certificate and the written report of a licensed real estate appraiser where there is no dispute as to title or value or, (ii) the receipt of the report of the commissioner in chancery, or (iii) where the assessor for the locality files an affidavit with the court of value and the value is averred to not exceed \$100,000, the court may appoint a special commissioner to sell the properties and execute the necessary deeds when a sale is found necessary or advisable and in doing so the appointee may be. The court may designate the attorney employed by the governing body of the ~~county, city or town~~ locality to bring the suit. However, if the property is deemed abandoned in accordance with § 58.1-3965, the court shall not be required to refer the case to the commissioner in chancery.

The sale price achieved at a public auction shall be prima facie, but rebuttable, evidence of the value of the property for purposes of the approval of the sale. If the attorney employed by the governing body of the ~~county, city, district or town~~ locality be appointed a special commissioner to sell the land and execute the deed and he has already given the bond hereinabove mentioned, no additional bond shall be required of him as special commissioner unless the court regards the bond already given as insufficient in amount. No fee or commission shall be allowed or paid to any attorney for acting under the order of reference or as special commissioner, except as hereinafter provided, and the compensation contracted to be paid any such attorney by the governing body, whether the employment was on a salary, commission or other basis, shall be in full for all services rendered by him. The court shall allow as part of the costs, to be paid into the treasury of the ~~county, city or town~~ locality, a reasonable sum to defray the cost of its attorneys and the expenses of publication and appraisal necessary for the purpose of instituting such suit and such fees and commissions, including fees for preparing and executing deeds, as would be allowed if the suit were an ordinary lien creditor's suit. When the special commissioner is other than the attorney employed by the ~~county, city or town~~ locality the court may allow him reasonable fees for selling the land and executing the deed, payable out of the proceeds of sale.

In any case in which the attorney representing the ~~county, city or town~~ locality and the governing body thereof have failed to reach an agreement as to a salary or commission or other basis as compensation for the services of such attorney, the court in which any proceedings are brought under this article may allow from the proceeds of the sale of any such real estate such fee as the court shall deem reasonable and proper to the attorney representing any such ~~county, city or town~~ locality in such

490 proceeding.