

11100806D

HOUSE BILL NO. 1826

House Amendments in [] - January 25, 2011

A BILL to amend and reenact §§ 36-55.25, 36-55.26, and 36-55.30 of the Code of Virginia, relating to the Virginia Housing Development Authority acting as loan servicer for housing lenders.

Patron Prior to Engrossment—Delegate Oder

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.25, 36-55.26, and 36-55.30 of the Code of Virginia are amended and reenacted as follows:

§ 36-55.25. Finding and declaration of necessity.

It is hereby declared: (i) that there exists within ~~this~~ 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 ~~this~~ 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

ENGROSSED

HB1826E

59 the purposes of supplying sanitary and safe dwelling accommodations at rents, prices or other costs
60 which such persons or families can afford or of stabilizing urban areas, including without limitation,
61 long-term federally insured mortgages; further, in revitalization areas designated in or pursuant to
62 § 36-55.30:2, to provide financing for nonhousing buildings that are incidental to residential housing
63 financed or to be financed in such areas pursuant to this chapter for low and moderate income persons
64 and families and for other persons and families or that are necessary or appropriate for the revitalization
65 of such areas or the industrial, commercial or other economic development of such areas; further, to
66 increase the construction and rehabilitation of low and moderate income housing through the purchase
67 from mortgage lenders authorized to make loans in the Commonwealth of mortgage loans for residential
68 housing for persons and families of low and moderate income in ~~this~~ *the* Commonwealth; further, to
69 acquire, develop and own multifamily residential housing for occupancy by persons and families of low
70 and moderate income; further, to provide technical, consultative and project assistance services to private
71 sponsors; further, to assist in coordinating federal, state, regional and local public and private efforts and
72 resources; to guarantee to the extent provided herein the repayment of certain loans secured by
73 residential mortgages; ~~and~~ further, to promote wise usage of land and other resources in order to
74 preserve the quality of life we value so highly in Virginia; *and further, to act as the loan servicer for a*
75 *housing lender.*

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

81 § 36-55.26. Definitions.

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

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

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

88 "County" means any county in the Commonwealth.

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

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

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

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

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

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

106 "HDA" means the Virginia Housing Development Authority created and established pursuant to
107 § 36-55.27 of this chapter.

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

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

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

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

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

155 "Land development" means the process of acquiring land for residential housing construction, and of
 156 making, installing, or constructing nonresidential housing improvements, including, without limitation,
 157 waterlines and water supply installations, sewer lines and sewage disposal and treatment installations,
 158 steam, gas and electric lines and installations, roads, streets, curbs, gutters, sidewalks, storm drainage
 159 facilities, other related pollution control facilities, and other installations or works, whether on or off the
 160 site, which HDA deems necessary or desirable to prepare such land primarily for residential housing
 161 construction within ~~this~~ the Commonwealth.

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

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

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

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

181 "Multifamily residential housing" means residential housing other than single-family residential

182 housing, as hereinafter defined.

183 "Municipality" means any city, town, county or other political subdivision of ~~this~~ *the*
184 Commonwealth.

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

189 "Persons and families of low and moderate income" means persons and families, irrespective of race,
190 creed, national origin or sex, determined by the HDA to require such assistance as is made available by
191 this chapter on account of insufficient personal or family income taking into consideration, without
192 limitation, such factors as follows: (i) the amount of the total income of such persons and families
193 available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities
194 available, (iv) the ability of such persons and families to compete successfully in the normal private
195 housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe
196 housing, and (v) if appropriate, standards established for various federal programs determining eligibility
197 based on income of such persons and families.

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

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

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

213 § 36-55.30. Powers of HDA generally.

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

- 216 1. Sue and be sued in its own name;
- 217 2. Have an official seal and to alter the same at pleasure;
- 218 3. Have perpetual succession;
- 219 4. Maintain an office at such place or places within ~~this~~ *the* Commonwealth as it may designate;
- 220 5. Adopt and from time to time amend and repeal bylaws, not inconsistent with this chapter, to carry
221 into effect the powers and purposes of HDA and the conduct of its business;

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

224 7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment,
225 transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage, operate, or
226 improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any
227 real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it
228 or under its control, custody or in its possession and release or relinquish any right, title, claim, lien,
229 interest, easement or demand however acquired, including any equity or right of redemption in property
230 foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding,
231 notwithstanding the provisions of any other law;

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

234 9. To enter into agreements or other transactions with the federal government, the Commonwealth of
235 Virginia or any governmental agency thereof or any municipality in furtherance of the purposes of this
236 chapter, including but not limited to the development, maintenance, operation and financing of any
237 housing development or residential housing, or land improvement; to enter into agreements with the
238 federal government or other parties for the provision by the HDA, or any entity or fund owned or
239 sponsored by or related to the HDA, of services and assistance in the restructuring or modification of
240 debt or subsidy, or in the improvement of the financial or physical condition, of any housing
241 development or residential housing, including without limitation any housing development or residential
242 housing owned, financed or assisted by the federal government or financed by a mortgage loan insured
243 by the federal government, which agreements may provide for the indemnification by the HDA of the

244 federal government or other parties against liabilities and costs in connection with the provision of such
 245 services and assistance if such indemnification is determined by the executive director to be in
 246 furtherance of the public purposes of this chapter, provided that (i) such indemnification shall be payable
 247 solely from the funds of the HDA, excluding any funds appropriated by the Commonwealth which shall
 248 be held by the HDA in a separate fund while such indemnification is in effect, (ii) such indemnification
 249 shall not constitute a debt or obligation of the Commonwealth and the Commonwealth shall not be
 250 liable therefor, and (iii) any such agreement limits the HDA's total liability for the indemnification
 251 thereunder to a stated dollar amount and notifies the federal government or other parties that the full
 252 faith and credit of the Commonwealth are not pledged or committed to payment of the HDA's obligation
 253 to indemnify the federal government or other parties under such agreement; to operate and administer
 254 loan programs of the federal government, the Commonwealth of Virginia, or any governmental agency
 255 thereof or any municipality involving land development, the planning, development, construction or
 256 rehabilitation of housing developments and residential housing, the acquisition, preservation,
 257 improvement or financing of existing residential housing or other forms of housing assistance for
 258 persons and families of low and moderate income, however funded; and to operate and administer any
 259 program of housing assistance for persons and families of low and moderate income, however funded;

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

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

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

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

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

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

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

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

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

290 19. Subject to the requirements of any agreements with bondholders or noteholders, to enter into
 291 contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or
 292 carrying charges to persons unable to pay the regular schedule of charges where, by reason of other
 293 income or payment from any department, agency or instrumentality of the United States or ~~this~~ *the*
 294 Commonwealth, such reductions can be made without jeopardizing the economic stability of housing
 295 being financed;

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

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

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

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

305 24. To invest in, purchase or make commitments to purchase securities or other obligations secured
306 by or payable from mortgage loans on, or issued for the purpose of financing or otherwise assisting land
307 development or residential housing for persons or families of low or moderate income;
308 25. To acquire, develop and own multifamily residential housing as hereinafter provided;
309 26. To enter into agreements with owners of housing developments eligible for federal low-income
310 housing credits as hereinafter provided in this chapter; ~~and~~
311 27. To exercise any of the powers granted by this chapter for the purpose of financing an
312 economically mixed project and, if such project is within a revitalization area designated in or pursuant
313 to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such
314 governing body to be necessary or appropriate for the revitalization of such area or for the industrial,
315 commercial, or other economic development of such area; provided that a capital reserve fund shall not
316 be created for any such financing pursuant to § 36-55.41; *and*
317 28. *To make and enter into contracts and agreements to act as the loan servicer for a housing*
318 *lender [on properties located in or outside of the Commonwealth to persons and families of any*
319 *income] .*