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HOUSE BILL NO. 73

Offered January 8, 2020

Prefiled December 5, 2019

A BILL to amend and reenact §§ 36-55.31 and 36-55.33:1 of the Code of Virginia, relating to Virginia Housing Development Authority; power to make loans; loans to finance payments on student debt.

Patrons—Kory; Senator: Saslaw

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

**1. That §§ 36-55.31 and 36-55.33:1 of the Code of Virginia are amended and reenacted as follows:
§ 36-55.31. Powers relative to making mortgage loans and temporary construction loans to housing sponsors and persons and families of low and moderate income.**

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

(1) through (3) [Repealed.]

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

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

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

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

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

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

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

71 (9) Foreclose under deeds of trust by powers of sale pursuant to Title 55.1 and amendments thereto;

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

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

81 (12) Make, undertake commitments to make and participate in the making of mortgage loans,
82 including ~~without limitation~~ federally insured mortgage loans, to housing sponsors and persons and
83 families of low and moderate income to finance the construction, rehabilitation, preservation or
84 improvement of housing developments and residential housing intended, upon completion of such
85 construction, rehabilitation, preservation or improvement, for ownership or occupancy by persons and
86 families of low and moderate income, upon the terms and conditions set forth in subsections A and D of
87 § 36-55.33:1;

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

95 (14) *Make, undertake commitments to make, and participate in the making of mortgage loans,*
96 *including federally insured mortgage loans, to finance the purchase or refinancing of single-family*
97 *residential housing and to make payments on the homeowner's student loan debt, upon the terms and*
98 *conditions set forth in subsections A and F of § 36-55.33:1.*

99 **§ 36-55.33:1. Mortgage loan terms and conditions.**

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

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

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

111 3. HDA shall have authority to establish and modify from time to time the interest rates at which it
112 shall make mortgage loans and commitments therefor. Such interest rates shall be established by HDA
113 in its sole discretion at the lowest level consistent with HDA's cost of operation and its responsibilities
114 to the holders of its bonds, bond anticipation notes and other obligations. In addition to such interest
115 charges, HDA may make and collect such fees and charges, including ~~but not limited to~~ reimbursement
116 of HDA's financing costs, service charges, insurance premiums and mortgage insurance premiums, as
117 HDA determines to be reasonable. No person shall, by way of defense or otherwise, avail himself of
118 any of the provisions of Chapter 3 (§ 6.2-300 et seq.) of Title 6.2 to avoid or defeat the payment of any
119 interest or fee which he shall have contracted to pay on any loan or forbearance of money made,
120 directly or indirectly, or assisted in any manner by HDA under or pursuant to this chapter.

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

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

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

3. With respect to any such HDA mortgage loan made to a limited profit housing sponsor, HDA may require that such limited profit housing sponsor not make distributions in any one year with respect to the housing development or multifamily residential housing financed by such HDA mortgage loan in excess of such percentage of such limited profit housing sponsor's equity in the housing development or multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. None of the partners, principals, stockholders or holders of a beneficial interest in such limited profit housing sponsor shall earn, accept or receive a return in any one year with respect to the housing development or multifamily residential housing financed by such HDA mortgage loan greater than his applicable proportion of any such percentage of such limited profit housing sponsor's equity in the housing development or multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. The right to any such limited distribution or return may be cumulative to the extent provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. For the purpose of this section, the terms "distribution" and "return" are intended to mean payments on account of the housing development or multifamily residential housing financed by such HDA mortgage loan resulting from the operation thereof. Any payment to a person or entity who is a partner, principal, stockholder or holder of a beneficial interest in such limited profit housing sponsor shall not be deemed a "distribution" or "return" to such person or entity if the funds with which such payment is made are funds paid or contributed to such limited profit housing sponsor by persons or entities purchasing a beneficial interest in such limited profit housing sponsor. At or after the completion of construction, rehabilitation or improvement of the housing development or multifamily residential housing financed by such HDA mortgage loan, such limited profit housing sponsor's equity in the housing development or multifamily residential housing shall be established in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. Such equity shall be determined by HDA, at its option, as either (i) the difference between the total housing development costs as to the housing development or multifamily residential housing and the final principal amount of such HDA mortgage loan, or (ii) the difference between the fair market value of such housing development and the final principal amount of such HDA mortgage loan. HDA may thereafter from time to time adjust such equity to be equal to the difference, as of the date of adjustment, between the fair market value of such housing development and the outstanding principal balance of such HDA mortgage loan. HDA may review and regulate a proposed retirement of any capital investment in, or redemption of any stock of, such limited profit housing sponsor in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

e. The existence of statewide housing plans.

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

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

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

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

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

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

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

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

F. Mortgage loans made by HDA to persons and families of low and moderate income to finance the purchase or refinancing of single-family residential housing and to make payments on the homeowner's student loan debt, pursuant to subdivision (14) of § 36-55.31, shall be subject to the following terms and conditions in addition to those contained in subsection A:

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

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

309 3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such
310 HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed
311 or approved by HDA. With respect to any such HDA mortgage loan, HDA may require the person or
312 family of low or moderate income to execute such agreements, assurances, guarantees, and certifications
313 as HDA shall determine to be necessary, including agreements between HDA and such person or family
314 of low or moderate income relating to the use, occupancy, maintenance, and sale of the single-family
315 residential housing financed by such HDA mortgage loan and the payment, prepayment, and assignment
316 of such HDA mortgage loan.