

LD7573476

HOUSE BILL NO. 2176

Offered January 23, 1995

A BILL to amend and reenact § 36-139 of the Code of Virginia; to amend the Code of Virginia by adding in Title 36 a chapter numbered 10, consisting of sections numbered 36-152 through 36-161, and by adding a section numbered 54.1-2101:1; relating to creation of the Virginia Homeless Persons Revolving Fund.

Patrons—Van Landingham, Almand, Cooper, Crittenden, Cunningham, Darner, Plum, Scott and Thomas;
Senators: Gartlan, Howell, Lambert, Lucas and Miller, Y.B.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 36-139 of the Code of Virginia is amended and reenacted; the Code of Virginia is amended by adding in Title 36 a chapter numbered 10, consisting of sections numbered 36-152 through 36-161, and by adding a section numbered 54.1-2101:1, as follows:

§ 36-139. Powers and duties of Director.

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.1-1412.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Comprehensive Housing Affordability Strategy to guide the development and implementation of housing programs in the Commonwealth for the purpose of meeting the housing needs of the Commonwealth and, in particular, those of low-income and moderate-income persons and families.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Comprehensive Housing Affordability Strategy, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Administering the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).

14. Establishing and operating a Building Code Academy for the training of personnel in building regulations promulgated by the Board of Housing and Community Development.

15. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

16. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.

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60 17. Administering, with the cooperation of the Department of Health, state assistance programs for
61 public water supply systems.

62 18. Advising the Board on matters relating to policies and programs of the Virginia Housing
63 Partnership Revolving Fund *and the Virginia Homeless Persons Revolving Fund*.

64 19. Designing and establishing program guidelines to meet the purposes of the Virginia Housing
65 Partnership Revolving Fund *and the Virginia Homeless Persons Revolving Fund* and to carry out the
66 policies and procedures established by the Board.

67 20. Preparing agreements and documents for loans and grants to be made from the Virginia Housing
68 Partnership Revolving Fund *and the Virginia Homeless Persons Revolving Fund*; soliciting, receiving,
69 reviewing and selecting the applications for which loans and grants are to be made from such ~~fund~~
70 *Funds*; directing the Virginia Housing Development Authority as to the closing and disbursing of such
71 loans and grants and as to the servicing and collection of such loans; directing the Virginia Housing
72 Development Authority as to the regulation and monitoring of the ownership, occupancy and operation
73 of the housing developments and residential housing financed or assisted by such loans and grants; and
74 providing direction and guidance to the Virginia Housing Development Authority as to the investment of
75 moneys in such ~~fund~~ *Funds*.

76 21. Advising the Board on matters relating to policies for the low-income housing credit and
77 administering the approval of low-income housing credits as provided in § 36-55.63.

78 22. Establishing and administering program guidelines for a statewide homeless intervention program.

79 23. Carrying out such other duties as may be necessary and convenient to the exercise of powers
80 granted to the Department.

81 CHAPTER 10.

82 VIRGINIA HOMELESS PERSONS REVOLVING FUND.

83 § 36-152. *Definitions.*

84 *As used in this chapter, unless the context requires a different meaning:*

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

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

87 *"Direct services" shall be defined in the program guidelines developed by the Department.*

88 *"Fund" means the Virginia Homeless Persons Revolving Fund created by this chapter.*

89 *"Homeless" and "at risk of becoming homeless" shall be defined in the program guidelines developed*
90 *by the Department.*

91 *"Housing development" or "housing project" means any work or undertaking, whether new*
92 *construction or rehabilitation, which is designed and financed pursuant to the provisions of this chapter*
93 *for the primary purpose of providing affordable, sanitary, decent and safe dwelling accommodations for*
94 *homeless persons or families or those persons or families at-risk of becoming homeless. Such work or*
95 *undertaking may include purchasing any building or buildings, land, equipment, facilities, or other real*
96 *or personal property or properties which are necessary, convenient, or desirable appurtenances,*
97 *including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and such*
98 *offices, and other nonhousing facilities incidental to such development or project such as administrative,*
99 *community, health, educational and recreational facilities as the Department determines to be necessary.*

100 *"Organization" means any not-for-profit agency, association, or other legal entity or any combination*
101 *thereof, which (i) provides direct services to homeless persons or families or those persons or families*
102 *at risk of becoming homeless; (ii) is approved by the Department as qualified either to own, construct,*
103 *acquire, rehabilitate, operate, manage or maintain a housing development or project; and (iii) is subject*
104 *to the regulatory powers of the Department and other terms and conditions set forth in this chapter.*

105 *"Residential housing" means a specific work or improvement within this Commonwealth, whether*
106 *multi-family or single-family residential housing, undertaken primarily to provide dwelling*
107 *accommodations, including the acquisition, construction, rehabilitation, preservation or improvement of*
108 *land, a building or buildings and improvements thereto, for residential housing, and such other*
109 *nonhousing facilities as may be incidental, related, or appurtenant thereto.*

110 *"VHDA" means the Virginia Housing Development Authority created in Chapter 1.2 (§ 36-55.24 et*
111 *seq.) of this title.*

112 § 36-153. *Creation and management of the Fund.*

113 *There shall be set apart a permanent and perpetual fund, to be known as the "Virginia Homeless*
114 *Persons Revolving Fund," consisting of: (i) sums as may be appropriated by the General Assembly; (ii)*
115 *sums as may be allocated to the Commonwealth for this purpose by the United States government; (iii)*
116 *interest on real estate brokers' and salespersons' trust accounts established pursuant to subsection C of*
117 *§ 54.1-2101.1; (iv) all income from the investment of moneys held in the Fund; and (v) any other sums*
118 *designated for deposit into the Fund from any source, public or private. The Fund is created to address*
119 *the serious shortage in the Commonwealth of sanitary, decent, and safe residential housing for homeless*
120 *persons or families or those persons or families at risk of becoming homeless. Housing developments*
121 *and projects funded through the Fund are intended to provide housing opportunities for such persons*

and families by (i) preserving existing housing units, (ii) producing new housing units and (iii) assisting persons or families with special needs to obtain adequate housing.

The Fund shall be administered and managed by the VHDA as prescribed in this chapter. In order to carry out the administration and management of the Fund, the VHDA is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, public accountants, engineers and other technical advisers and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The VHDA may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be reviewed by the Board for its management services, which fee shall not exceed such amount as would be customary and usual for the services rendered.

§ 36-154. Deposit of money; expenditures; investments.

All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings and loan associations located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the VHDA or other officers or employees designated by the Commissioners of the VHDA. All deposits of money shall, if required by the Director of the Department, be secured in a manner determined by the Director of the Department to be prudent. All banks, trust companies and savings and loan associations are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the VHDA. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the VHDA at the direction and guidance of the Director of the Department in obligations or securities which are considered lawful investments for public funds under the laws of the Commonwealth. All interest and earnings accrued from investments of moneys from the Fund shall be used to increase the amount available in the Fund.

§ 36-155. Annual audit.

An independent certified public accountant selected by the VHDA shall annually audit the accounts of the Fund, and the cost of such audit services shall be borne by the VHDA and be paid from moneys designated for such purposes in the Fund. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as are considered necessary under the circumstances. Such audit shall be reviewed by the Auditor of Public Accounts. The VHDA shall furnish copies of the audit to the Governor and to the Board.

§ 36-156. Collection of money due Fund.

The VHDA is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund. Proceedings to recover amounts due to the Fund may be instituted by the VHDA in the name of the Fund in the appropriate circuit court.

§ 36-157. Grants.

Subject to any restrictions which may apply to the use of money in the Fund, the Board shall make grants or appropriations from the Fund to organizations which provide direct services to homeless persons or families or those persons or families at risk of becoming homeless for the acquisition, construction, improvement, ownership or occupancy of housing developments or projects or residential housing. Grants shall be disbursed from the Fund by the VHDA in accordance with the directions of the Director of the Department.

§ 36-158. Pledge of assets to secure bonds of the VHDA.

Upon the direction of the Director of the Department, the VHDA is empowered at any time and from time to time to transfer from the Fund to banks or trust companies designated by the VHDA any or all of the assets of the Fund to be held in trust as security for the payment of the principal of and premium, if any, and interest on any or all of the bonds of the VHDA. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal of and premium, if any, and interest on such bonds of the VHDA to which the assets have been pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of and premium, if any, and interest on such bonds of the VHDA. Any assets of the Fund transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund, but shall be subject to the pledge to secure the bonds of the VHDA and shall be held by the trustee to which they are pledged until no longer required for such purpose by the terms of the pledge. On or before January 10 of each year, the VHDA shall transfer, or shall cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth above

183 which are no longer required to be held in trust pursuant to the terms of the pledge.

184 § 36-159. Formation of corporation.

185 For the purposes set forth in §§ 36-152 through 36-158, the VHDA may form a corporation to
186 administer and manage the Fund in accordance with the provisions thereof and to exercise and perform
187 any or all of the powers and duties provided therein. Such corporation shall be under the control and
188 supervision of the VHDA. Such corporation shall have those powers and duties of the VHDA set forth in
189 the above-referenced sections as VHDA shall delegate to such corporation and such other powers and
190 duties as shall be provided by the documents and instruments creating and governing the corporation
191 and by applicable state law. The provisions of the above-referenced sections authorizing or requiring
192 the VHDA to exercise any power or to perform any duty shall be deemed to authorize or require such
193 corporation to exercise any such power or to perform any such duty as shall be delegated by the VHDA
194 to such corporation.

195 § 36-160. Reports.

196 On or before September 30 of each year, the VHDA shall report to the Board on the status of the
197 Fund. On or before December 1 of each year, the Board shall report to the Secretary of Commerce and
198 Trade, the Governor, and the Chairmen of the House Appropriations and the Senate Finance
199 Committees on the matters set forth in the report of the VHDA and on such other matters regarding the
200 Fund as the Board may deem appropriate or as may be requested by any of the foregoing persons to
201 whom such report is to be submitted.

202 § 36-161. Liberal construction of chapter.

203 The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may
204 be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other
205 law, general, special or local, the provisions of this chapter shall be controlling.

206 54.1-2101:1. Maintenance of trust accounts by real estate brokers and salespersons; reporting
207 requirements.

208 A. Every real estate broker or salesperson licensed pursuant to this chapter shall maintain client
209 trust accounts in accordance with this section. For purposes of this section, "client" means any person
210 who employs a real estate broker or salesperson to perform duties specified in § 54.1-2100 or
211 § 54.1-2101 in connection with a real estate transaction.

212 B. All client funds shall be deposited in the type of account specified in subsection C unless they are
213 deposited in:

214 1. A separate interest-bearing trust account for a specific and individual matter for a particular
215 client. There shall be a separate account for each such particular matter. Interest so earned shall be
216 held in trust as property of each client;

217 2. A pooled interest-bearing trust account with subaccounting which shall provide for computation of
218 interest earned by each client's funds and the payment thereof, net of any transaction costs, to each
219 client. Interest so earned shall be held in trust as property of each client; or

220 3. A pooled non-interest-bearing trust account in those circumstances where, on a regular, recurring,
221 ongoing basis, the aggregate average balance in the account is normally such that any interest earned,
222 if the funds were placed in an interest-bearing account, would not be sufficient to pay reasonable and
223 customary account maintenance charges actually imposed on an interest-bearing account by the bank.
224 When the low aggregate average balance circumstances cease to exist, the account shall be converted to
225 interest-bearing status as described in subdivision 1 or 2 above or in subsection C.

226 C. If not held in accounts with the interest paid to clients as provided in B 1 or B 2 of this section,
227 or in a non-interest-bearing account as provided in B 3, a real estate broker or salesperson shall
228 establish a pooled interest-bearing insured depository account for client funds which are nominal in
229 amount or are expected to be held for a short period of time in compliance with the following
230 provisions:

231 1. No interest from such an account shall be made available to the real estate broker or salesperson.

232 2. The account shall include only those client funds which are nominal in amount or are expected to
233 be held for a short period of time.

234 3. Real estate brokers or salespersons depositing client funds in an interest-bearing insured
235 depository account pursuant to this subsection shall direct the depository institution to:

236 a. Periodically, but at least quarterly, remit to the Virginia Housing Development Authority (the
237 "Authority") interest or dividends on the average monthly balance of each such account or as otherwise
238 computed in accordance with such financial institution's standard accounting practice, provided that
239 such rate of interest shall not be less than the rate paid by such financial institution to regular
240 depositors who are not real estate brokers or salespersons.

241 b. Transmit, with each remittance to the Authority, a statement identifying the name of the real estate
242 broker or salesperson from whose account the remittance is sent, the period for which remittance is
243 made, the rate of interest applied, the total amount of interest earned, the service charges or other fees
244 assessed against the account, if any, and the net amount of interest remitted.

c. Transmit to the depositing real estate broker or salesperson, at the same time as the statement required in subdivision b above, a report showing the amount paid to the Authority, the rate of interest applied, the fees assessed, and the average account balance for the period for which the report is made.

d. Charge no fees against a trust account established pursuant to subsection C that are greater than the fees charged to depositors who are not real estate brokers or salespersons, except that a remittance fee may be charged to defray the depository institution's reasonable administrative costs attributable to calculating and remitting the interest to the Authority.

e. Collect no fees from the principal deposited in a trust account established pursuant to subsection C.

4. Interest accruing on accounts established pursuant to subsection C and paid by the financial institution to the Authority shall be used for the Virginia Homeless Persons Revolving Fund created in Chapter 10 (§ 36-152 et seq.) of Title 36.

D. In determining whether to use one of the accounts specified in subsection B or C, a real estate broker or salesperson shall take into consideration the following factors:

1. The amount of interest which the client's funds would reasonably be expected to earn during the period such funds are expected to be on deposit;

2. The cost of establishing and administering an account, including the time spent on such tasks; and

3. The capability of financial institutions reasonably available for deposit of client funds to calculate and pay interest to individual clients in the case of a pooled trust account.

No disciplinary action shall be instituted by the Real Estate Board against any real estate broker or salesperson solely by reason of making a good-faith determination of the appropriate type of account in which to deposit client funds.

E. A real estate broker or salesperson who deposits funds of a client in an interest-bearing account in accordance with subsection C shall not be required to seek permission from such client or to compute or report to such client any payment to the Authority of interest or dividends by the banking institution on funds in any such account.

F. Every trust account shall stand in the name of the real estate broker or salesperson and shall be clearly labeled and designated as an account established pursuant to subsection B or C of this section.

G. A real estate broker or salesperson shall be exempt from the requirements of this section if:

1. The nature of the real estate broker's or salesperson's practice or position of employment is such that he never receives client funds that would require a trust account under this section;

2. The real estate broker or salesperson is engaged in the practice of real estate in another jurisdiction and not engaged in such practice in the Commonwealth; and

3. The real estate broker or salesperson has been granted a special exemption by the Real Estate Board, for good cause shown. "Good cause shown" shall include reasons beyond the control of the real estate broker or salesperson, such as the unavailability of a financial institution in the community which offers interest-bearing accounts, or such other cause as may be determined by the Real Estate Board, whose determination shall be final.

H. On or before July 1 of each year, every real estate broker or salesperson licensed pursuant to this chapter shall certify his compliance with this section in a manner prescribed by the Real Estate Board. The Real Estate Board may require certain information it deems reasonably necessary for inclusion in such certifications and such certifications shall be signed and dated by the reporting real estate broker or salesperson.

I. Failure to comply with this section, including filing an untruthful certification, shall subject the real estate broker or salesperson to disciplinary action by the Real Estate Board.