

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 298

An Act to amend and reenact §§ 36-55.33:2, 36-55.35 and 36-55.40 of the Code of Virginia and to repeal § 36-55.37:1 of the Code of Virginia, relating to the Virginia Housing Development Authority.

[H 1504]

Approved March 20, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.33:2, 36-55.35 and 36-55.40 of the Code of Virginia are amended and reenacted as follows:

§ 36-55.33:2. Powers relative to acquisition, development and ownership by HDA of multi-family residential housing.

A. HDA shall have all the powers necessary or convenient to purchase, acquire, construct, rehabilitate, own, operate, improve, repair, maintain, encumber, mortgage, lease, sell and transfer or otherwise dispose of multi-family residential housing or any part or interest therein for occupancy by persons and families of low and moderate income. For the purposes of this section, HDA may form corporations, joint ventures, partnerships, trusts or other legal entities or any combination thereof, on its own behalf or in conjunction with individuals or other public or private entities, to serve as housing sponsors for multi-family residential housing developments; may acquire, own, encumber, pledge, sell, transfer or otherwise dispose of interests in such housing sponsors; may provide financing and other funding to such housing sponsors; and may exercise all necessary or convenient rights and powers and perform all requisite duties and obligations relating thereto. HDA shall not exercise the powers granted under this section with respect to any multi-family residential housing development, unless HDA makes the following findings:

1. That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low income or moderate income can afford within the general housing market area to be served by the proposed housing development.

2. That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low and moderate income can afford.

3. That private sponsors would not be willing, without assistance, to undertake the proposed housing development upon substantially similar terms and conditions.

4. That HDA has not received notification from both the local housing authority having jurisdiction over the area in which the housing development would be located and the sponsor of such development that it is the preference of both parties that the local housing authority undertake the proposed housing development.

5. That the proposed housing development will provide well-planned, well-designed housing for persons or families of low and moderate income.

6. That the housing development will be of public use and will provide a public benefit.

7. That the housing development will be undertaken within the authority conferred by this chapter upon HDA.

B. HDA shall also find, in connection with the new construction or substantial rehabilitation by HDA of any proposed multi-family residential housing development, that the governing body of the locality in which such housing development is to be located has not, within sixty days after written notification of such proposed construction or substantial rehabilitation has been sent by HDA to such governing body and to any local housing authority having jurisdiction in such locality, certified to HDA in writing its disapproval of the proposed multi-family residential housing development. The foregoing notwithstanding, no such finding need be made if HDA has received from the governing body its certified resolution approving the proposed housing development.

C. At least sixty days prior to purchasing, acquiring, constructing or rehabilitating any multi-family residential housing development pursuant to this section, HDA shall publish a notice in a newspaper of general circulation in the locality in which such development is to be located. Such notice (i) shall state that HDA intends to purchase, acquire, construct or rehabilitate a multi-family residential housing development or developments in such locality and shall solicit proposals from interested parties for such purchase, acquisition, construction or rehabilitation or (ii) shall identify the multi-family residential housing development or developments to be purchased, acquired, constructed or rehabilitated and shall request comments from the general public with respect to such proposed purchase, acquisition, construction or rehabilitation.

D. In the event HDA or any legal entity formed by HDA is to construct or rehabilitate a multi-family residential housing development pursuant to this section, HDA or such legal entity shall

contract with a private firm for the performance of such construction and rehabilitation, unless HDA determines that no responsible private firm would be willing and able to contract for such construction or rehabilitation at a price necessary for the financial feasibility of such development. HDA or any legal entity formed by HDA shall contract with a private firm or public body for the performance of management services for any multi-family residential housing development owned by HDA or such legal entity pursuant to this section, unless HDA determines that no responsible private firm and no public body would be willing and able to contract for the performance of such management services at a price necessary for the financial feasibility of such development. For the purpose of this subsection, the term "private firm" shall include an individual, joint venture, partnership, stock corporation, trust or other similar business entity legally authorized to perform the construction, rehabilitation or management, as may be applicable, of the proposed multi-family residential housing development.

~~E. The power to purchase, acquire, construct and rehabilitate multi-family residential housing pursuant to this section shall expire on July 1, 1997.~~

§ 36-55.35. Terms and conditions of purchase and sale to mortgage lenders of mortgage loans; loans to mortgage lenders.

(1) A. No obligation shall be eligible for purchase or commitment to purchase by HDA from a mortgage lender hereunder if the date of said obligation precedes the date of HDA's commitment to purchase such obligation by such number of years as shall be determined by HDA and unless at or before the time of transfer thereof to HDA such mortgage lender certifies:

(a) 1. That in its judgment the loan would in all respects be a prudent investment; and

(b) 2. That the proceeds of sale or its equivalent shall be reinvested as provided in subsection (6) F of this section, or invested in short-term obligations pending such reinvestment. *However, certification shall not be required in the case of the purchase or commitment to purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof.*

(2) B. HDA shall purchase mortgage loans at a purchase price equal to the outstanding principal balance; however, discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return which in the opinion of HDA is consistent with the obligations of the HDA hereunder and the purposes of this chapter. In addition to the aforesaid payment of outstanding principal balance HDA shall pay the accrued interest due thereon, on the date the loan or obligation is delivered against payment therefor. *The provisions of this subsection shall not apply to the purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof, in which case the purchase price shall be determined by agreement of HDA and the mortgage lender.*

(3) C. Loans purchased or sold hereunder may include but shall not be limited to loans which are insured, guaranteed or assisted by the federal government or for which there is a commitment by the federal government to insure, guarantee or assist such loan.

(4) D. HDA shall from time to time adopt, modify or repeal rules and regulations governing the making of loans to mortgage lenders and the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules and regulations as to any or all of the following:

(a) 1. Procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans or for loans to mortgage lenders;

(b) 2. Limitations or restrictions as to number of family units, location or other qualifications or characteristics of residences to be financed by residential mortgage loans and requirements as to the income limits of persons and families of low and moderate income occupying such residences;

(c) 3. Restrictions as to the interest rates on residential mortgage loans or the return realized therefrom by mortgage lenders;

(d) 4. Requirements as to commitments by mortgage lenders with respect to residential mortgage loans;

(e) 5. Schedules of any fees and charges necessary to provide for expenses and reserves of the HDA; and

(f) 6. Any other matters related to the duties and the exercise of the powers of HDA to purchase and sell mortgage loans or to make mortgage loans or other loans to mortgage lenders.

Such rules and regulations shall be designed to effectuate the general purposes of this chapter and the following specific objectives: (i) the expansion of the supply of funds in the Commonwealth available for residential mortgage loans; (ii) the provision of the additional housing needed to remedy the shortage of adequate housing in the Commonwealth and eliminate the existence of a large number of substandard dwellings; and (iii) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions.

(5) E. The interest rate or rates and other terms of the loans to mortgage lenders made from the proceeds of any issue of bonds of the HDA shall be at least sufficient so as to assure the payment of said bonds and the interest thereon as the same become due from the amounts received by HDA in repayment of such loans and interest thereon.

(6) F. HDA shall require as a condition of each loan to a mortgage lender and as a condition of the

purchase or the making of a commitment to purchase mortgage loans from a mortgage lender that such mortgage lender within such period of time following the receipt of the proceeds as shall be prescribed by rules and regulations of HDA, shall have entered into written commitments to make, and shall thereafter proceed as promptly as practicable to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than twenty years from the date thereof in an aggregate principal amount equal to the amount of such proceeds. HDA shall not purchase nor make commitment to purchase mortgage loans or obligations from a mortgage lender from which it has previously purchased mortgage loans nor make a loan to a mortgage lender to which it has previously made a loan unless said mortgage lender has either restored or made commitments to restore to its portfolio of residential mortgage loans in the Commonwealth of Virginia, residential mortgage loans having a stated maturity of not less than twenty years from the date thereof in an aggregate principal amount equal to either the proceeds of prior sale or the amount of prior loan to said mortgage lender. HDA may require the submission to it by each mortgage lender of evidence satisfactory to it of the making of such new residential mortgage loans. *The provisions of this subsection shall not apply to the purchase or commitment to purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof.*

(7) G. HDA shall require that such loans to mortgage lenders shall be additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security in such amounts as HDA shall by resolution determine to be necessary to assure the payment of such loans and the interest thereon as the same become due. Such collateral security shall consist of (a) direct obligations of, or obligations guaranteed by, the United States of America or the Commonwealth of Virginia; (b) bonds, debentures, notes or other evidences of indebtedness, satisfactory to the HDA, issued by any of the following federal agencies: Bank for Cooperatives, Federal Intermediate Credit Bank, Federal Home Loan Bank System, Export-Import Bank of Washington, Federal Land Banks, the Federal National Mortgage Association or the Government National Mortgage Association; (c) direct obligations of or obligations guaranteed by the Commonwealth; or (d) mortgages insured or guaranteed, upon terms and conditions satisfactory to the HDA, by the federal government or private mortgage insurance companies as to payment of principal and interest.

§ 36-55.40. Notes and bonds.

(4) (a) A. 1. HDA shall have power and is hereby authorized to issue from time to time its negotiable notes and bonds in conformity with applicable provisions of the Uniform Commercial Code in such principal amount as HDA shall determine to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of HDA, establishment of reserves to secure such notes and bonds, and all other expenditures of HDA incident to and necessary or convenient to carry out its corporate purposes and powers. *In accordance with § 2.1-326.2:1, such power to issue notes and bonds shall not be restricted or limited solely because the interest on the notes and bonds is subject, in whole or in part, directly or indirectly, to federal income taxes.*

(b) 2. HDA shall have the power, from time to time, to issue (i) notes to renew notes and (ii) bonds, to pay notes, including the interest thereon and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The refunding bonds may be (i) exchanged for the bonds to be refunded or (ii) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(c) 3. Except as may otherwise be expressly provided by HDA, every issue of its notes and bonds shall be general obligations of HDA payable out of any revenues or moneys of HDA, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(2) B. The notes and bonds shall be authorized by resolution or resolutions of HDA, shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide, except that no bond shall mature more than fifty years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of HDA may be sold by HDA, at public or private sale, at such price or prices as HDA shall determine.

(3) C. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(a) 1. Pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(b) 2. Pledging all or any part of the assets of HDA, including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(c) 3. The use and disposition of the gross income from mortgages owned by HDA and payment of

principal of mortgages owned by HDA;

- ~~(d)~~ 4. The setting aside of reserves or sinking funds and the regulation and disposition thereof;
 - ~~(e)~~ 5. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;
 - ~~(f)~~ 6. Limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;
 - ~~(g)~~ 7. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;
 - ~~(h)~~ 8. Limitations on the amount of moneys to be expended by HDA for operating expenses of HDA;
 - ~~(i)~~ 9. Vesting in a trustee or trustees such property, rights, powers and duties in trust as HDA may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of such trustee;
 - ~~(j)~~ 10. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of HDA to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the Commonwealth and the other provisions of this chapter;
 - ~~(k)~~ 11. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.
- ~~(4)~~ D. Any pledge made by HDA shall be valid and binding from the time when the pledge is made; HDA's interest, then existing or thereafter obtained, in the revenues, moneys, mortgage loans, receivables, contract rights or other property or proceeds so pledged shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against HDA, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded, nor shall any filing be required with respect thereto.
- ~~(5)~~ E. Neither the commissioners of HDA nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.
- ~~(6)~~ F. HDA, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of HDA, which shall thereupon be cancelled, at a price not exceeding
- ~~(a)~~ 1. If the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or
 - ~~(b)~~ 2. If the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.
- ~~(7)~~ G. In the discretion of HDA, the bonds may be secured by a trust indenture by and between HDA and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the Commonwealth. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of HDA in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. HDA may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of HDA. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.
- ~~(8)~~ H. Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the notes and bonds for registration.
- ~~(9)~~ I. In case any of the commissioners or officers of HDA whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

2. That § 36-55.37:1 of the Code of Virginia is repealed.