

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 498

*An Act to amend and reenact §§ 36-55.26, 36-55.30, 36-55.30:2, and 36-55.38 of the Code of Virginia, relating to powers of the Virginia Housing Development Authority.*

[H 881]

Approved April 1, 1996

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 36-55.26, 36-55.30, 36-55.30:2, and 36-55.38 of the Code of Virginia are amended and reenacted as follows:**

§ 36-55.26. Definitions.

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

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

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

"County" means any county in the Commonwealth.

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

*"Economically mixed project" means residential housing to be occupied by persons and families of low and moderate income and by other persons and families as the HDA shall determine.*

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

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

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

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

"Housing development costs" means the sum total of all costs incurred in the development of a housing development, which are approved by the HDA as reasonable and necessary, which costs shall include, but are not necessarily limited to: fair value of land owned by the sponsor, or cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing site or payments for the purchase of such properties; cost of site preparation, demolition and development; architecture, engineering, legal, accounting, HDA, and other fees paid or payable in connection with the planning, execution and financing of the housing development; cost of necessary studies, surveys, plans and permits; insurance, interest; financing, tax and assessment costs and other operating and carrying costs during construction; cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery and apparatus related to the real property; cost of land improvements, including without limitation, landscaping and off-site improvements, whether or not such costs have been paid in cash or in a form other than cash; necessary expenses in connection with initial occupancy of the housing development; a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor; an allowance established by HDA for working capital and contingency reserves, and reserves for any anticipated operating deficits during the first two years of occupancy; the cost of such other items, including tenant relocation, if such tenant relocation costs are not otherwise being provided for, as HDA shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

"Housing development" or "housing project" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this chapter for the primary purpose of providing sanitary, decent and safe dwelling accommodations for persons and families of low or moderate income in need of housing; such undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and such offices, and other nonhousing facilities incidental or related to such development or project such as administrative, community, health, nursing care, medical, educational and recreational

facilities as HDA determines to be necessary, convenient or desirable. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

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

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

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

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

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

"Municipality" means any city, town, county or other political subdivision of this Commonwealth.

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

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

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

"Multi-family residential housing" means residential housing other than single-family residential housing, as hereinafter defined.

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

§ 36-55.30. Powers of HDA generally.

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

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

6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage, operate, or improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law;
8. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities to effectuate the purposes of this chapter;
9. To enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof or any municipality in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any housing development or residential housing, or land improvement; to operate and administer loan programs of the federal government, the Commonwealth of Virginia, or any governmental agency thereof or any municipality involving land development, the planning, development, construction or rehabilitation of housing developments and residential housing, the acquisition, preservation, improvement or financing of existing residential housing or other forms of housing assistance for persons and families of low and moderate income, however funded; and to operate and administer any program of housing assistance for persons and families of low and moderate income, however funded;
10. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to such conditions, acceptable to HDA, upon which such aid, grants, contributions and cooperation may be made, including, but not limited to, rent supplement payments made on behalf of eligible persons or families or for the payment in whole or in part of the interest expense for a housing development or for any other purpose consistent with this chapter;
11. To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department, agency, or instrumentality of the United States or of this Commonwealth, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or instrumentality;
12. To provide advice and technical information, including technical assistance at the state and local levels in the use of both public and private resources to increase low-income housing resources for the disabled;
13. To employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;
14. To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;
15. To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe and to create insurance funds and form corporations for the purpose of providing mortgage guaranty insurance on mortgage loans made or financed by HDA pursuant to this chapter;
16. To invest its funds as provided in this chapter or permitted by applicable law;
17. To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided;
18. Subject to the requirements of any agreements with bondholders or noteholders, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which HDA is a party;
19. Subject to the requirements of any agreements with bondholders or noteholders, to enter into contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from any department, agency or instrumentality of the United States or this Commonwealth, such reductions can be made without jeopardizing the economic stability of housing being financed;
20. To procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or notes or any other evidences of indebtedness thereof issued by HDA or an authority, including the power to pay premiums on any such insurance;
21. To make and enter into all contracts and agreements with mortgage lenders for the servicing and processing of mortgage loans pursuant to this chapter;
22. To establish, and revise from time to time and charge and collect fees and charges in connection

with any agreements made by HDA under this chapter;

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

24. To invest in, purchase or make commitments to purchase securities or other obligations secured by or payable from mortgage loans on, or issued for the purpose of financing or otherwise assisting land development or residential housing for persons or families of low or moderate income;

25. To acquire, develop and own multi-family residential housing as hereinafter provided; and

26. To enter into agreements with owners of housing developments eligible for federal low-income housing credits as hereinafter provided in this chapter; and

27. *To exercise any of the powers granted by this chapter for the purpose of developing an economically mixed project or proposed development located within a locally designated conservation, rehabilitation, redevelopment or housing rehabilitation district.*

§ 36-55.30:2. Housing rehabilitation districts; economically mixed projects.

(a) ~~Whenever it appears to the governing body of any city that~~ a portion of such city (i) is blighted or deteriorated, as provided in subdivision 1 of § 36-49, (ii) is deteriorating, as provided in § 36-49.1, (iii) is likely to deteriorate, as provided in § 36-52.3, or (iv) is characterized by a higher relative density of population and proportion of substandard housing than in the overall metropolitan area and inhabited predominantly by persons of a lower socio-economic status than that prevailing in the metropolitan area, and in any such case that private enterprise and investment may not be expected, without assistance, to produce the construction or rehabilitation of sanitary and safe housing to meet the needs of persons and families of low and moderate income within such area and to induce other persons to live within such area and thereby help to stabilize or recover a desirable economic mix of persons therein, ~~such the governing body of such city or county may by resolution create a housing rehabilitation district encompassing such portion of such city or county.~~

(b) ~~If any such governing body shall determine that a proposed housing project, within or without a housing rehabilitation district, if any, may feasibly serve persons and families of low and moderate income only by effectively subsidizing the rentals of such persons and families through higher rentals charged to other persons or that, for any other reason, such proposed project is feasible only if a portion, providing housing and other facilities for other persons and families, not to exceed eighty percent, thereof is to be rented to persons other than persons and families of low and moderate income, of the total project, it may by resolution declare such proposed project an economically mixed project.~~

(c) ~~Any such governing body shall appoint a board of five persons, all of whom shall be residents of the city and at least four of whom shall be representatives of savings and loan associations, commercial banks and mortgage bankers, which shall evaluate the ability of private enterprise and investment, without assistance, to meet the needs of persons and families of low and moderate income within any proposed housing rehabilitation district and to induce other persons to live within such proposed district. No housing rehabilitation district shall be created, nor any proposed project declared an economically mixed project, by the a governing body of any city unless such board governing body, by a majority vote of at least three members, shall have first determined, in the case of a housing rehabilitation district, that private enterprise and investment may not reasonably be expected to meet such the housing needs of persons and families of low and moderate income within the district, and induce persons with higher incomes to live within the proposed district or, in the case of an economically mixed project, that private enterprise and investment have been unable, without assistance, to provide sufficient mortgage financing for the proposed project at interest rates producing rentals which will result in rents or prices persons or families of low and moderate income can afford. Unless the board shall reaffirm its determination after four years from the date of its previous determination, then the status of any area as a housing rehabilitation district shall terminate on the fifth anniversary of such previous determination. In addition, no proposed project shall be declared an economically mixed project unless the governing body shall have previously approved a revitalization plan for the district prior to declaring a project economically mixed.~~

(d) ~~No housing rehabilitation district shall be created, nor any proposed project declared an economically mixed project, by the governing body of any city, except a city having (i) no fewer than 110,000 nor more than 111,000 inhabitants according to the 1970 federal census and (ii) at least seven per centum of all residential housing units located within such city receiving rental or mortgage interest subsidization from other than private sources.~~

§ 36-55.38. Admission and income limitations relative to housing developments.

(1) Admission to housing developments financed pursuant to the provisions of this chapter shall be limited to persons or families of low or moderate income *and, in the case of economically mixed projects or housing units within housing rehabilitation districts, such other persons and families as the HDA shall determine.*

(2) HDA shall make and publish rules and regulations from time to time governing the terms of tenant selection plans and income limits for tenants eligible to occupy housing developments assisted by HDA in conformance with the provisions of this chapter and such income limits may vary with the size and circumstances of the person or family.

(3) HDA shall by rules and regulations provide income standards for continued residence in housing developments assisted by HDA, and either HDA, or with its approval the housing sponsor of any such housing development may terminate the tenancy or interest of any person or family residing in any such housing development whose gross aggregate income exceeds prescribed income standards for a period of six months or more; provided, that no tenancy or interest of any such person or family in any such housing development shall be terminated except upon reasonable notice and opportunity to obtain suitable alternate housing, in accordance with rules and regulations of HDA; provided further, that any such person or family, with the approval of HDA, shall be permitted to continue to occupy the unit, subject to payment of a rent or carrying charges or surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by HDA.

(4) Any person or family residing in a housing development which shall be a cooperative and is required to be removed from the housing development because of excessive income as herein provided shall be discharged from liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed, in accordance with the rules of HDA, for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for such purpose.