

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 442

*An Act to amend and reenact §§ 36-55.30, 36-55.40, and 36-55.44 of the Code of Virginia, relating to the Virginia Housing Development Authority (VHDA); powers.*

[H 1342]

Approved April 12, 1998

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

**1. That §§ 36-55.30, 36-55.40, and 36-55.44 of the Code of Virginia are amended and reenacted as follows:**

§ 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 enter into agreements with the federal government or other parties for the provision by the HDA, or any entity or fund owned or sponsored by or related to the HDA, of services and assistance in the restructuring or modification of debt or subsidy, or in the improvement of the financial or physical condition, of any housing development or residential housing, including without limitation any housing development or residential housing owned, financed or assisted by the federal government or financed by a mortgage loan insured by the federal government, which agreements may provide for the indemnification by the HDA of the federal government or other parties against liabilities and costs in connection with the provision of such services and assistance if such indemnification is determined by the executive director to be in furtherance of the public purposes of this chapter, provided that (i) such indemnification shall be payable solely from the funds of the HDA, excluding any funds appropriated by the Commonwealth which shall be held by the HDA in a separate fund while such indemnification is in effect, (ii) such indemnification shall not constitute a debt or obligation of the Commonwealth and the Commonwealth shall not be liable therefor, and (iii) any such agreement limits the HDA's total liability for the indemnification thereunder to a stated dollar amount and notifies the federal government or other parties that the full faith and credit of the Commonwealth are not pledged or committed to payment of the HDA's obligation to indemnify the federal government or other parties under such agreement;* 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;

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.

#### § 36-55.40. Notes and bonds.

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.

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.

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.

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.

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:

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;

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;

3. The use and disposition of the gross income from mortgages owned by HDA and payment of principal of mortgages owned by HDA;

4. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

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;

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;

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;

8. Limitations on the amount of moneys to be expended by HDA for operating expenses of HDA;

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;

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;

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.

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.

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.

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 *unless HDA shall provide written notification to the trustee pursuant to subsection J*, at a price not exceeding:

1. If the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or

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.

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.

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.

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.

*J. Notwithstanding any statute or case law to the contrary, the purchase or actual or constructive ownership by HDA of any of its notes or bonds with the intent that such notes or bonds remain outstanding, as evidenced by written notification from HDA to the trustee under the resolution or trust indenture, shall not cause such notes or bonds or the indebtedness evidenced thereby to be canceled or extinguished, subject to such terms and conditions as may be set forth in the written notification and except as may be otherwise provided in the resolution or trust indenture.*

§ 36-55.44. Deposit and investment of moneys of HDA.

(1) A. All moneys of HDA except as otherwise authorized or provided in this chapter shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the Commonwealth ~~or, in national banking associations, in federal home loan banks,~~ or to the extent then permitted by law, in savings institutions organized under the laws of the Commonwealth of Virginia or the United States. The moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by HDA. Each payment shall be approved by the executive director or such other officers or employees of HDA as HDA shall authorize. Deposits of such moneys shall, if required by HDA, be secured as it shall prescribe, and all banks and trust companies are authorized to give such security for such deposits.

~~(2) Subject to the provisions of subsection (3), funds of HDA not needed for immediate use or disbursement, including any funds held in reserve, may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporation, as set forth in § 26-40 of Chapter 3 of Title 26 and amendments thereto and (ii) bankers' acceptances.~~

*B. Unless otherwise limited by contract with the holders of any of its notes or bonds or with any other parties making loans to HDA, any moneys of HDA and any moneys held in trust or otherwise for the payment of such notes, bonds or loans may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporation, as set forth in § 26-40, (ii) any investments and deposits authorized by Chapter 18 (§ 2.1-327 et seq.) of Title 2.1, and (iii) any other investments which are permitted pursuant to subsection C for moneys held under any bond resolution or trust indenture of the Authority and which, when acquired by HDA, have, or are general obligations of issuers who have, long-term ratings of at least AA or Aa or the highest short-term ratings, as applicable, by two rating agencies, one of which shall be Moody's Investors Service, Inc., or Standard & Poor's Ratings Group or any successor thereto.*

~~(3) C. Notwithstanding~~ *In addition to the authorization in subsection B and regardless of any other provisions of law which would otherwise have the effect of limiting the powers set forth in this subsection, HDA shall have power to contract with the holders of any of its notes or bonds and with any other parties making loans to HDA as to the custody, collection, securing, investment and payment of any moneys of HDA and of any moneys held in trust or otherwise for the payment of such notes or bonds or loans, and to carry out such contracts. Unless otherwise specified in such contracts, moneys held in trust or otherwise for the payment of notes or bonds or loans or in any way to secure notes or bonds or loans and deposits of such moneys may be secured in the same manner as set forth in subsection (1) of this section A.*

(4) D. Whenever investments are made in accordance with this section, no commissioner or employee of HDA shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part.