

Senate Bill 1031

Commercial real estate referrals (Hanger)

This legislation will allow Virginia real estate agents to pay commissions to other states' licensees who bring buyers or tenants into Virginia for commercial transactions. The goal is to encourage and facilitate cross-border transactions in the commercial field.

House Bill 2541

Mandatory background checks for real estate license applicants (Amundson)

Several years ago, VAR studied the issue of requiring mandatory background checks for real estate license applicants. We concluded that the process for conducting background checks — including a criminal record check — wasn't efficient enough at that time.

Since then, however, we have determined that the Virginia Real Estate Board can comply with required background checks efficiently by using an electronic interface with the Comprehensive Criminal Record Exchange.

VAR's bill will require that the VREB have an electronic interface with CCRE.

Senate Bill 1157 / House Bill 2135

Recordation tax / grantor tax assessments - stated consideration (Saslaw / Jackson Miller)

In the 2008 General Assembly session, VAR introduced legislation requiring that the calculation of grantor taxes owed at closing be determined using the "stated consideration of the property" — the sale price — instead of the assessed value. Due to the unanticipated fiscal implications on local governments, the bill was carried over for the year.

VAR will introduce legislation in 2009 that requires the application of the grantor tax to be based on the sales price of the property. This legislation would also include a provision that any person who intentionally misstated the sales price in the calculation of the stated consideration would be guilty of a misdemeanor criminal offense.

House Bill 1680

Vested Rights (Orrock)

The City of Norfolk has interpreted the vested rights law that was passed last year (as part of VAR's 2008 Legislative Agenda) so as to exempt fire damage from the vested rights provisions.

After several meetings with city officials over the summer and fall, it has become apparent to VAR staff that we should introduce a bill in the 2009 General Assembly session specifically including fire damage in the vested rights statutes.

Have Questions?

Please contact VAR Legislative Consultant Martin K. Johnson (martin@FutureLaw.net) or
VAR Legislative Counsel Chip Dicks (chipdicks@futurelaw.net)

House Bill 1785

Virginia Property Owners' Association Act amendments (Hull)

In 2008, VAR spearheaded major reforms of the POA Act. The Department of Professional and Occupational Regulation and the Virginia Housing Commission are working together to ensure that the state and the represented constituencies conform their various regulations and begin to adhere to the new statutory provisions. Needless to say, there will be technical and policy amendments made in the coming years, but those will be channeled through the Virginia Housing Commission.

The only issue that VAR seeks to amend in 2009 deals specifically with properties that are sold at auction. Such properties would be exempt from the provisions regarding POA disclosure packets.

Senate Bill 997 / House Bill 1724

Secondary signature (John Miller / Rust)

State law allows a local government to include in its local towing ordinance a requirement for a secondary signature prior to any towing, which may require the property manager be available whenever the towing company is planning to work — e.g., at 2 a.m. — to authorize a tow.

VAR's legislation will tighten secondary signature requirements, and we will work with the Virginia Municipal League and the Virginia Association of Counties to address other towing-related issues.

Senate Bill 1276 / House Bill 1788

Alternative Septic Systems (Martin / Hull)

Several local associations contacted VAR over the past year regarding localities actions by local governments to ban alternative septic systems. Both VAR and the Office of the Attorney General advised localities that while the Code of Virginia allows local governments to regulate alternative septic systems, the Code does not give them authority to ban outright these systems.

VAR's bill will clarify that local governments do not have the authority to ban alternative septic systems unless expressly authorized by the General Assembly.

House Bill 2040

Compensation of Attorneys for Real Estate Referrals (Laquinto)

Services rendered by attorneys in the performance of their duties are exempted from the provisions of the Code defining and regulating real estate salespersons and their activities.

VAR will introduce a bill to clarify within this exemption that an attorney is not entitled to claim or receive compensation merely for referring clients to real estate firms, unless that attorney is also licensed by the Virginia Real Estate Board as a real estate broker or salesperson.

Have Questions?

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2009

STANDING POSITIONS

APPRAISERS: ASSOCIATE REAL ESTATE APPRAISERS LICENSE

VAR supports a requirement that entry-level real estate appraisers be licensed, and that a license be obtained only after the completion of 75 hours of education. In addition, VAR supports legislation to allow appraisers to have the ability to make their licenses “inactive” under similar rules as those applied to real estate agents.

APPRAISERS: COMPOSITION OF THE VIRGINIA REAL ESTATE APPRAISER BOARD

The Virginia Real Estate Appraiser Board is a nine-member Board. The Real Estate Appraisal Board requires only six licensed appraisers. In the Commonwealth of Virginia, membership on professional boards and commissions has traditionally been limited to practitioners of the occupation or profession to be overseen, plus an appropriate number of citizen members.

VAR supports legislation to amend the *Code of Virginia*, Section 54.1-2012, to change the structure of the Virginia Real Estate Appraisal Board to reflect seven members licensed as real estate appraisers, two as certified general, two as certified residential and three licensed and two citizen members.

AUCTION OF REAL ESTATE

VAR recognizes the need for qualified real estate auctioneers and further, the need to protect the consumers in real estate transactions. VAR supports the requirement that any person selling real estate at voluntary public auction must be licensed pursuant to the Real Estate Board.

BAD CHECK RECOVERY

VAR supports legislation to address the recurring problem of the absence of a meaningful penalty for a tenant giving a landlord a bad check for payment of residential rent. VAR supports strengthening the civil remedies for bouncing checks or making it a criminal offense for repeat offenders.

BPOL EXEMPTION FOR APPRAISERS

In 2002, a law was adopted that exempts real estate brokerages from paying BPOL tax on commissions paid to their affiliated licensees, who are independent contractors but practicing under the broker’s license. Registered business entities (Section 54.1-2011E) seek the same exemption for themselves when their staff affiliates are licensed appraisers and independent contractors.

This would fairly assess the BPOL tax on any staff affiliate who is a licensed appraiser and will benefit from the cash receipt/income.

VAR supports exempting appraisers from certain BPOL taxes when their staff affiliates are licensed appraisers and independent contractors.

BUILDING ACCESS FOR TELECOMMUNICATIONS & VIDEO SERVICES

VAR supports the right of private property owners to receive compensation for the reasonable value of the services performed by the landlord and the reasonable value of the rental real property used by a telecommunications or video provider in multiple dwelling units (MDUs).

BUILDING CODE ENFORCEMENT IN EXISTING PROPERTIES—RENTAL INSPECTION AUTHORITY

The Uniform Statewide Building Code (USBC), in the “Property Maintenance” provisions applicable to existing commercial and residential properties, allows a local building official to address maintenance issues that affect the public health, welfare and safety. VAR opposes any effort on the part of local governments to use the USBC to require property owners to retrofit properties, or to inspect rental properties, without the permission of the property owner, except in the one circumstance addressed in the existing state law, which is when the local government has evidence that inspection is necessary for the public health, welfare and safety.

CHESAPEAKE BAY PRESERVATION ACT

VAR is concerned about maintaining the balance between a healthy Chesapeake Bay and a strong, viable economy in Virginia. VAR supports local ordinances that do not go beyond the Commonwealth’s mandated minimums. VAR will continue to support reasonable and fair regulations that promote a balance between economic growth, the protection of private property rights and the preservation of the environment while opposing any initiatives that exceed these criteria. VAR will oppose efforts to expand the CBPA.

DILLON RULE

The Dillon Rule is the foundation of the good business climate we enjoy in the Commonwealth. VAR opposes any substantive changes to Virginia’s Dillon Rule system.

ECONOMIC DEVELOPMENT INITIATIVES

Oftentimes, Virginia finds itself in a highly competitive battle with other states in attracting industry and jobs to the Commonwealth. To lure desirable industries, other states offer comprehensive packages, which include state funding, tax credits and infrastructure development. Given the broad-based economic development fostered by the location of major industries in Virginia, VAR supports the philosophy of providing relocating businesses with fiscally responsible incentive packages, which might include items such as state funding, tax credits, and infrastructure development.

These incentive packages should not diminish, however, the Commonwealth's commitment to fostering a pro-business environment, which facilitates the growth of small businesses, as they are responsible for the employment of the majority of citizens, and of other established Virginia businesses, which have already shown a commitment to the economic vitality of the Commonwealth.

ENTERPRISE ZONES

VAR supports the expansion and enhancement of the state's Enterprise Zone Program.

EXTERIOR INSULATING AND FINISHING SYSTEM (EIFS)

VAR believes that EIFS is a disclosure issue, not a material defect. As additional studies are conducted, VAR and its local associations continue to monitor this issue to ensure that we reduce potential harm to the public and liability for REALTORS® from EIFS products.

GROWTH ISSUES

Increased population growth and demographic shifts from urban centers have prompted major discussions about poor development patterns and whether local governments have the necessary authority to effectively regulate land use and fund their public infrastructure needs.

VAR and its local associations oppose the expansion of local government authority by the General Assembly in land use powers. VAR has consistently supported additional broad-based revenue sources for public infrastructure funding.

To that end, VAR supports:

- Efforts to encourage regional cooperation; and
- Dedicated, broad-based funding methods.

VAR strongly opposes additional "growth control" measures that only exacerbate current problems with sprawl and the lack of affordable housing in many regions of the Commonwealth. Examples include:

- Adequate Public Facilities (APF) ordinances, which would require that supporting infrastructure be in place prior to, or concurrent with, governmental approval of a particular project;
- cash proffers;
- Mandatory Transfer of Development Rights (TDR); and
- Exclusionary zoning practices such as drastic increases in minimum lots sizes or other decisions that discourage high-density development.

HISTORIC PRESERVATION ORDINANCES

VAR opposes the implementation of historic preservation ordinances that go beyond the current state law in regulation of historic preservation and create unreasonable costs for property owners. VAR believes that historic preservation benefits the entire community and should be paid for by the entire community by allowing tax credits for compliance with ordinance requirements.

HOMEOWNERS INSURANCE

Due to a difficult insurance market, homeowners insurance has become increasingly difficult to obtain and afford. Since mortgage lenders will not grant a loan without property insurance, this can be the crucial factor in a real estate transaction.

VAR recognizes that homeowners insurance is an essential part of the real estate transaction and is dedicated to ensuring its availability and affordability for all consumers. To that end, VAR supports:

- Measures to improve consumers' access to their individual credit information, C.L.U.E. report and insurance score;
- Improvements to the underwriting process that would increase predictability for consumers;
- Increased accuracy of the claim information that insurance companies report to the C.L.U.E. database; and
- Clear legislative and/or administrative guidelines on the practice of credit scoring, which includes requiring that insurers promptly respond to requests for issuance of homeowners' insurance and that insurers not cancel homeowners' insurance policies after closing on the purchase of a home.

HOUSING OPPORTUNITY

VAR is concerned about the limited supply of “workforce” housing in many localities throughout Virginia.

On the homeownership front, the decreased housing supply in many localities has caused home prices to increase dramatically, which follows the basic laws of economics.

We are committed to improving the affordability of housing, committed to the development and preservation of Virginia’s housing stock and making it available to the widest range of potential homebuyers.

As a means of addressing our concerns, VAR will continue to identify regulatory impediments, on both the state and local levels, to the development of housing that meets the needs of all Virginians. VAR will also look for innovative methods that can be utilized by state and local government to address these issues.

IN-FILL DEVELOPMENT AND INNER CITY REVITALIZATION

VAR believes that the revitalization of our inner cities and policies which promote in-fill development are central to addressing sprawl. In short, we believe revitalizing older neighborhoods and encouraging in-fill development are sound public policy, as these practices utilize already existing infrastructure. Officials at all levels of government should cooperate and collaborate to alleviate obstacles inherent in efforts to achieve such revitalization. Every effort should be made to address the concerns of current residents who worry about the impact of planned in-fill development upon their quality of life.

LEAD-BASED PAINT

VAR supports the current federal law that mandates lead warning and disclosure in the sale or lease of homes built prior to 1978, but opposes mandatory lead testing and/or abatement tied to any aspect of the real estate transaction process. VAR supports the goal of assuring that residential properties are made “lead-safe” rather than “lead-free,” and supports government backed financial incentives and relief to encourage the abatement and/or encapsulation of residential lead hazards. VAR supports efforts similar to ones proposed in California, which specify that disclosure in purchase contracts is sufficient for disclosure purposes. However, VAR is opposed to efforts to mandate that lead paint risk assessments be conducted.

LICENSE REVOCATION/SUSPENSION FOR SEXUAL

OFFENDERS

The current Virginia statutes do not require the Real Estate Board to suspend or revoke the license of a real estate licensee who is found guilty of a sexual crime and listed on the Sex Offender and Crimes Against Minors Registry. The Real Estate Board Regulations define such conduct as being in violation of the Regulations, with the Real Estate Board having the authority to suspend or revoke the license of a real estate licensee, upon conviction, once all appeals have been exhausted.

Many local associations offer lockbox and keypad services, which allow electronic entry into homes listed for sale or rent. Many of the policies and bylaws for local associations and their keypad program also prevent termination of services for members convicted of sexual offenses until all appeals processes are completed, or their licenses have been revoked or suspended.

VAR supports amending the *Code of Virginia* allowing the Virginia Real Estate Board to summarily revoke or suspend a real estate licensee who has been convicted of a sexual offense and/or listed on the Sex Offender and Crimes Against Minors Registry, prior to exhaustion of all appeals.

LOCAL REGULATIONS WHICH EXCEED STATE MANDATES

VAR supports legislation which would prohibit a local government from imposing a stricter regulation or standard than the standard established by any state regulatory agency. Conversely, VAR opposes legislation that would grant local governments the authority to impose stricter regulations or standards that those established by state law.

PRESERVATION OF OPEN SPACE AND THE ENVIRONMENT

We support the preservation of lands through public action as long as those efforts respect private property rights and are not achieved through “takings.” We believe lands designated for open space or other preservation should always be purchased from a willing seller who is compensated at fair market value. We believe that those who benefit from open space – the general public—should fund its purchase. We oppose the use of real estate fees as a dedicated funding source for open space that is enjoyed by the general public.

PRIVATE PROPERTY RIGHTS

VAR strongly supports fair and comprehensive federal and state private property rights legislation that

balances restrictions on property with the constitutional private property rights guaranteed by the Fifth Amendment of the United States Constitution.

PRIVATIZATION OF GOVERNMENT SERVICES

VAR supports continued efforts to transfer appropriate government services into the private sector, both at the state and local levels.

PROPERTY OWNERS ASSOCIATION ACT

The Property Owner's Association Act (POA) requires a disclosure by the association of rules and regulations of that association to potential homebuyers, prior to the purchase of a property subject to the POA. For some smaller, older associations, it can be difficult to meet the requirements because they have no staff or inadequate records. VAR believes that the current provisions of the POA strike the right balance and provide a fair and reasonable process for all parties.

REAL ESTATE SETTLEMENT PRACTICES

VAR will oppose any proposal that would substantially amend CRESPA or CRESPA's legislative intent either through the Virginia State Bar or in the General Assembly. We also oppose any language that prohibits REALTORS® and other lay settlement agents from having the right to conduct fair business practices and giving consumers their rightful choices in settling transactions.

REGIONAL COOPERATION

VAR encourages local governments to work together in regional efforts to save costs and eliminate duplication of services. The General Assembly should continue to develop and implement incentives for local governments to work together in regional cooperative efforts to provide services to citizens at a lower cost, and to enhance the region's opportunities for future economic development.

REGULATION OF HOME INSPECTORS

VAR supports the expansion of the voluntary certification program toward the creation of a licensing and continuing education protocol. Currently Virginia home inspectors participate in a voluntary certification program. VAR would like the system to become mandatory and include a rigorous continuing education program to ensure consumers who use a home inspector are assured of having a well trained professional.

REGULATION OF SEPTIC INSPECTORS

VAR supports the creation of a licensing and continuing education protocol for septic inspectors. Currently the Commonwealth lacks a septic system inspector licensing system. These associations are committed to working with the Virginia Department of Health to develop an inspection-licensing program to protect the public health.

REMOTE ACCESS OF PUBLIC RECORDS

Remote access (via the Internet) to public records, e.g., residential tax data, greatly facilitates the daily business practices of REALTORS®.

Nevertheless, given the public access to the data that invariably results from its posting on the Internet, protection of private and personal data is a legitimate concern of government.

VAR respects an individual's right to privacy and believes that government can protect that right while at the same time fulfilling its legal obligation to provide public records upon inquiry and to provide these records through the most efficient means possible, including remote access. VAR opposes any legislation that would place unnecessarily burdensome and costly regulations upon governmental entities that seek to provide public records via remote access.

RESIDENTIAL RENTAL LATE FEES/ VRLTA

VAR continues to oppose any attempts to limit late fees recoverable by a landlord against a tenant who pays rent late. Landlords currently have the authority in the Virginia Residential Landlord Tenant Act (VRLTA) to require all tenants to pay rent in a timely fashion in accordance with a lease agreement.

ROLL BACK TAXES/LAND USE PROGRAM

VAR generally supports current law for counties utilizing the "land use" assessment program. We oppose any efforts by local governments to impose roll back taxes upon a change in the local comprehensive plan. In an effort to raise money, some localities have attempted to impose roll back tax assessments by changing the local comprehensive plan to project a non-agricultural use for the land. There are inequities under the existing statute, in particular, the authority of a local government to impose roll back assessments when there has been a zoning change, which discourages responsible zoning by landowners when they do not have a specific user for the property being rezoned. VAR supports local governments having the authority to impose roll back assessments upon the "change in use", not based upon a change in the comprehensive plan or zoning for a property.

SPECIAL EXCEPTION PERMITS/ ZONING REQUIREMENTS

VAR is concerned about the misuse of the Special Exception Zoning Process to control or restrict land use options. VAR will support legislative efforts to ensure the fair application of zoning laws.

STORM WATER MANAGEMENT

VAR supports responsible storm water control programs that do not overly burden the property owner.

SUBDIVISIONS: FAMILY

VAR supports existing state law with respect to family transfers. VAR will oppose any local government restrictions that would limit families (as defined in the *Code of Virginia*) in their rights to divide, sell or gift their property among themselves.

TAXATION IN VIRGINIA

VAR supports broad-based taxation, as opposed to taxation on only a portion of the population.

Business, Professional and Occupational License (BPOL) Tax:

VAR remains concerned over the equity in the application of the BPOL tax, limits on the real estate tax and taxes on services. VAR will continue to work towards a more equitable method of application of the BPOL tax and, at the appropriate time, will push for its repeal. However, VAR opposes efforts to repeal the BPOL tax in lieu of a tax on services.

Real Estate Taxes:

VAR opposes efforts to limit or “cap” real estate taxes, unless those caps are but one aspect of a substantial reformation of the state’s tax code.

VAR opposes efforts to establish a separate tax classification for various classes of real property including but not limited to different classifications for residential and commercial real property.

VAR, however, does support legislation to provide voluntary authority to local governments to exempt a percentage of assessed value of residential housing provided any such exemption is targeted to those homeowners whose owner-occupied residential housing is affordable as defined by the locality, or the homeowner’s income falls within that of the population being served by the affordable housing programs of the locality.

Recordation and Grantor and Transfer Taxes:

VAR recognizes the need for Virginia’s localities to raise revenue to address critical infrastructure needs, particularly for school construction. VAR opposes

additional increases in recordation, grantor and other transfer taxes for the following reasons:

- Increasing recordation and grantor taxes places an additional burden on homebuyers and sellers at the time of settlement and places an unreasonable burden on real property owners;
- Recordation, grantors and other transfer taxes are an unstable and unpredictable source of revenue. Because home sales are cyclical, when a downturn in the housing market occurs, revenues from recordation and transfer taxes fall, creating added pressures for a tax increase;
- Any transfer tax also is a regressive tax. In general, people tend to spend a smaller share of their income on housing as their income increases; and
- Recordation, grantors and transfer taxes are more severe than an increase in a broad-based tax designed to generate the same amount of total revenue. The base transfer tax is very narrow relative to a more general tax, such as a local option sales tax; so fewer people pay the tax in a given year. Distributing the burden among a wider group of taxpayers reduces the tax burden per taxpayer.

TERMITE AND PEST CONTROL INSPECTOR REGULATION

VAR supports a licensing/certification program for termite and pest control inspectors and will continue to work with the Virginia Pest Control Association to accomplish this goal.

TRANSPORTATION PROJECTS

VAR recognizes the need to develop a balanced transportation system that can effectively move people and products throughout the Commonwealth while enhancing the economy and preserving a high quality of life. VAR believes that our transportation system, provided by the state and in conjunction with local governments, should be funded by broad-based revenue sources.

Accordingly, VAR supports:

- A dedicated long-term funding source for transportation;
- A constitutional amendment that would dedicate funds to transportation construction and maintenance;
- The use of bonding authority to underwrite the costs associated with major transportation projects;
- Creative approaches to transportation construction and maintenance through increased use of the Public-Private Transportation Authority (PPTA);

- Creative approaches to congestion management efforts through proven practices;
- Creation of regional entities authorized to collect and distribute public funds for transportation projects and maintenance; and
- Road improvements, as well as accommodations for car/vanpools, light rail, and a feeder bus system that ties into Metrorail.

VANDALISM OR CRIMES TO PROPERTY

VAR opposes legislation that would give local governments the authority to require businesses to be responsible for crime (including vandalism) occurring on their property. The property owners in these circumstances are themselves victims of crime and should not be ordered by local governments to make repairs within a certain time or face penalties of the local government or even lose the right to occupy the property.

VIRGINIA RESIDENTIAL LANDLORD TENANT ACT

VAR supports a balance in the Virginia Residential Landlord Tenant Act (VRLTA) and clarifications in the law to avoid confusion for public officials, lawyers, judges, real estate professionals, the general public, and most of all, landlords and tenants.

WATER RIGHTS

VAR believes that a landowner's use of groundwater on real property is just one "stick" in the "bundle" of real property rights. Virginia has always followed the common law practice of what is called the "American Rule," which means that a landowner can have unlimited use of the groundwater beneath his property so long as the use is "reasonable" and the water is not exported off the land.

VAR views the use of groundwater as an inherent part of private property rights and opposes any attempts by state or local officials to infringe upon this right, except in instances of a water emergency. VAR also opposes any local government efforts to link water supply planning and growth management without any consideration of increased capacity.

WETLANDS--CLEAN WATER ACT

VAR supports government policies that would:

- Ensure that appropriate scientific criteria are used to identify regulated areas;
- Focus on preserving high value wetlands;
- Require that local officials and affected property owners be notified of the program and the presence of wetlands; and
- Encourage the use of wetlands mitigation banking.