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REDEVELOPMENT AND HOUSING AUTHORITIES

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3-1 SCOPE

3-1.01 Overview

This chapter discusses the legal issues associated with Redevelopment and Housing Authorities in Virginia. After outlining the history of housing and redevelopment legislation, the chapter describes the law within the Commonwealth of Virginia pertaining to the organization, powers, and responsibilities of redevelopment agencies. The chapter then addresses housing and redevelopment projects and concludes with a discussion of spot blight abatement. *See also* [Chapter 28, Blight and Nuisance](#).

3-2 FEDERAL AND STATE LAW

3-2.01 United States Housing Act of 1937

The United States Housing Act of 1937 provides as follows:

It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit . . . to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income and . . . to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs.

42 U.S.C. § 1437. The Housing Act of 1937, as amended, authorizes several forms of financial assistance to public housing agencies. The Secretary of the United States Department of Housing and Urban Development (HUD) may (1) make loans to help finance the development, acquisition, or operation of low-income housing projects, *id.* § 1437b(a); (2) make annual contributions to assist in achieving and maintaining the lower income character of housing projects, *id.* § 1437c(a)(1); (3) make contributions in the form of grants to cover the development cost of public housing projects, *id.* § 1437c(a)(2); (4) enter into annual contributions contracts pursuant to which a public housing agency may make assistance payments to owners of existing dwelling units, *id.* § 1437f(b); (5) make annual contributions for the operation of low-income housing projects, in addition to contributions described in (2) and (3) above, *id.* § 1437g(e); and (6) make financial assistance available for the purpose of improving the physical condition of existing low-rent public housing projects, *id.* § 1437g(d).

3-2.02 Virginia Housing Authorities Law

In 1938, the General Assembly of the Commonwealth of Virginia enacted the Housing Authorities Law (hereinafter referred to as the "Act"). Housing Authorities Law, 1938 Va. Acts ch. 447 (codified as amended at Va. Code §§ 36-1 to 36-55.6). The Act sets forth the following findings and declaration of necessity:

1. Blighted areas exist in the Commonwealth, and these areas endanger the health, safety, and welfare of the citizens of the Commonwealth;
2. The elimination of blight and redevelopment of blighted areas through the designation of redevelopment areas and the adoption and implementation of redevelopment plans for such area; the prevention of further deterioration and blight through the designation of conservation areas and the adoption and implementation of conservation plans for such areas; and the designation of individual properties as blighted under the "spot blight" provisions of this chapter are public uses and purposes for which public money may be spent and private property acquired by purchase or through the exercise of the power of eminent domain as authorized by this chapter, and are governmental functions of grave concern to the Commonwealth;
3. As part of a redevelopment or conservation plan, it is a public purpose to provide public facilities including, but not limited to, roads, water, sewers, parks, and real estate devoted to open-space use as that term is defined in Va. Code § 58.1-3230 within redevelopment and conservation areas; and
4. It is a public purpose to promote the availability of affordable housing for all citizens of the Commonwealth and in particular to provide safe, decent, and sanitary housing for those citizens with low or moderate incomes. Va. Code § 36-2.

The Act also makes the following finding and declaration as to blighted areas:

[T]he clearance, replanning, rehabilitation and reconstruction of . . . blighted areas and the sale or lease of land and the acquisition and operation of residential housing units for low, moderate and middle income persons within such areas for redevelopment in accordance with locally approved redevelopment plans are necessary for the public welfare and are public uses and public purposes for which public money may be spent and private property acquired by purchase or the power of eminent domain, and are governmental functions of grave concern to the Commonwealth.

Id.

Under the Act, the term "slum" means "any area where dwellings predominate that, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities, or any combination of these factors, is detrimental to safety, health or morals." Va. Code § 36-3.

"Housing project" is defined under the Act as follows:

[A]ny work or undertaking: (i) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or (ii) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (iii) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and

improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

Id.

The term “persons of low income” means “persons or families determined by the authority to lack the amount of income which is necessary to enable them to live in decent, safe and sanitary dwellings.” *Id.*

The courts in the Commonwealth have considered several challenges to the constitutionality of the Act. These challenges involved questions of whether the provisions of the Act were an unconstitutional attempt to extend the police powers of the Commonwealth. Also involved were questions of whether the purpose of a redevelopment and housing authority (hereinafter referred to as an “authority”) was a public purpose and whether the taking of property by an authority was for a public or private use. The courts have upheld the constitutionality of the Act and sustained the power of an authority to eliminate slums and blighted areas as a proper exercise of police powers. Furthermore, in view of the public purpose of the Act, the construction of decent, low-cost public housing to be leased to tenants by an authority was a public use. Similarly, the sale, lease, or redevelopment of land by private interests has been consistently upheld as incidental and subordinate to the primary purpose of the Act, even in cases where a majority of such land was resold to private interests. The taking of property pursuant to the Act is for a public use and, consequently, the provisions of the Act bestowing the power of eminent domain do not violate the State Constitution. *City of Charlottesville v. DeHaan*, 228 Va. 578, 323 S.E.2d 131 (1984); *Rudder v. Wise Cnty. Redev. & Hous. Auth.*, 219 Va. 592, 249 S.E.2d 177 (1978); *Hunter v. Norfolk Redev. & Hous. Auth.*, 195 Va. 326, 78 S.E.2d 893 (1953); *Mumpower v. Hous. Auth. of Bristol*, 176 Va. 426, 11 S.E.2d 732 (1940).

3-3 CREATION OF AN AUTHORITY

3-3.01 Activation of an Authority

By statute, the General Assembly has created a redevelopment and housing authority in each city and county of the Commonwealth. An authority, however, is not activated and cannot exercise its powers until the voters of the jurisdiction, by a majority vote, have expressed a need for an authority. A referendum to determine the need for an authority may be called by a petition filed by at least 2 percent of the qualified voters registered in the jurisdiction. Va. Code § 36-4.

The governing body may also call for the referendum to determine whether there is a need for an authority in the locality if the governing body believes that it is appropriate for one of the reasons set out in Va. Code § 36-2. A referendum calling for the activation of an authority must be held at the next regularly scheduled election in the locality after resolution by the governing body or upon petition. A majority casting votes in the referendum must approve the need for an authority. Once a referendum has been held, no other referendum on the same question can be held in the locality for the next five years. If a majority is obtained, the authority is then empowered to transact business and exercise the powers conferred by the Act. Va. Code § 36-4.1.

After an authority has been activated, it is required to file a report annually of its activities during the preceding year with the clerk of the jurisdiction. The report must include a financial statement, a statement of the maximum income limits for tenants in the housing projects, and any recommendations the authority may have for additional legislation that it considers necessary to carry out its purposes. The records of an authority are public records and, subject to reasonable regulation by the authority, are to be open to public inspection during business hours. Va. Code § 36-5.

Localities that have not activated a redevelopment and housing authority are authorized to engage in research, studies, and experimentation in housing alternatives, including the rehabilitation of existing housing stock and the construction of additional housing. Va. Code § 15.2-959.

Additionally, industrial development authorities in localities where housing authorities have not been activated are granted limited authority with respect to facilities used primarily for single or multi-family residences. Va. Code § 15.2-4901. An industrial development authority for any such locality is not authorized to operate such facility or to exercise any powers of eminent domain, but is empowered to own, develop, construct, and finance such facilities. *Id.* The Virginia Housing Development Authority even recognizes industrial development authorities as eligible applicants for low-income housing tax credits. [Plan of the Virginia Housing Development Authority for the Allocation of Low-Income Housing Tax Credits](#) (updated Jan. 2022), Part 1(2); see *also* Chapter 11, Economic Development Incentives, section [11-5.01](#).

3-3.02 Authorities Are Local Entities

Under the Act, an authority is created as a political subdivision of the Commonwealth. *Mumpower v. Hous. Auth. of Bristol*, 176 Va. 426, 11 S.E.2d 732 (1940); Va. Code § 36-19. An authority does not come into existence by state initiative; local activation, optional for each locality, is required under the Act. Action by a locality is also required to appoint commissioners for the authority, to approve their compensation and to remove them for cause, to approve projects, and to direct the liquidation of a project. Va. Code §§ 36-7.1, 36-11, 36-11.1, 36-17, and 36-19. Thus, an authority is an entity purely local in nature and not a state agency performing a function of state government. *Virginia Elec. & Power Co. v. Hampton Redev. & Hous. Auth.*, 217 Va. 30, 225 S.E.2d 364 (1976).

In Virginia, a municipality is not entitled to the same immunity from tort liability that is enjoyed by the Commonwealth. A municipality acts in a governmental capacity or in a proprietary capacity. A municipality is immune from tort liability in failing to perform or in negligently performing governmental functions. With respect to proprietary functions, a municipality does not benefit from the same immunity. The operation and maintenance of a municipal housing project is a proprietary function and, therefore, an authority is not immune from liability for negligence. *Id.*; see *also* Chapter 20, State Law Immunity of Local Government Entities and Their Employees, section [20-4](#). Finally, redevelopment and housing authorities have no direct relationship to or affiliation with the Virginia Housing Development Authority, which was created under, and whose activities are governed by, Va. Code §§ 36-55.24 to 36-55.52.

3-4 RELATIONSHIP WITH COUNTIES, CITIES, & TOWNS

3-4.01 Cooperation with Local Governments

The governing body of any county, city, or town where a slum clearance, housing, redevelopment, or conservation project is located is empowered by the Act to cooperate with the redevelopment and housing authority responsible for the project in the planning, undertaking, construction, or operation of the project. Va. Code §§ 36-6, 36-52, 36-52.1. In cooperating with an authority on a project, the governing body may (1) dedicate, sell, convey, or lease any of its interests in property to the authority; (2) furnish parks, playgrounds, or recreational or community facilities in connection with or adjacent to the project; (3) furnish, dedicate, and provide roadways, alleys, and sidewalks; (4) plan or zone or make exceptions from building regulations or other ordinances with regard to the project; (5) furnish services to the authority; (6) enter into agreements with the authority with respect to the exercise of the jurisdiction's powers relating to the repair, elimination, or closing of unsafe, unsanitary, or unfit dwellings; (7) purchase the bonds of the authority or otherwise legally invest in such bonds; (8) do any and all things necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation

of the project; and (9) enter into agreements with the authority with respect to actions to be taken by the jurisdiction pursuant to the powers granted by the Act. Va. Code § 36-6.

The governing body of any county or city is also specifically empowered to determine, after a public hearing, that the need for a housing project has ceased to exist and that such project should be liquidated. Following such a determination, the governing body must notify the housing authority, which will then proceed to liquidate the project following public advertisement of the sale. Va. Code § 36-7.1.

If the housing authority is required to submit an application to the U.S. Department of Housing and Urban Development to liquidate the housing project, it must also serve notice of its intent to liquidate at least twelve months prior to the HUD application date to (i) the Virginia Department of Housing and Community Development; and (ii) each tenant residing in the housing project. Va. Code § 36-7.2 (describing the information such notices must include). Previously, the housing authority was also required to provide notice to any agency that would be responsible for administering tenant-based rental assistance to those who would be displaced from the housing project, but that requirement was eliminated in 2022. The housing authority cannot require any tenant currently residing in the housing project to leave until at least twelve months after notice is served upon the tenant, Va. Code § 36-7.2(D), except for a lease violation, including the failure to pay rent. Va. Code § 36-7.2(E). The statute provides a civil right of action for any violation of the notice requirements. Va. Code § 36-7.2(F).

The powers granted counties, cities, and towns by the Act are in addition and supplemental to powers conferred by any other law, except as may be expressly provided in the charter of a city or town specifically pertaining to an authority. Va. Code § 36-8. In cases where the provisions of the Act are inconsistent with the provisions of any other law, whether general, special, or local, the provisions of the Act are controlling except as may be otherwise expressly provided in the charter of a city or town specifically pertaining to an authority.

An authority is authorized under the Act to make payments for certain purposes to the jurisdiction in which it is located. See section [3-6.04](#).

3-4.02 Regional and Consolidated Housing Authorities

Virginia Code § 36-40 permits the boards of supervisors of two or more contiguous counties to adopt resolutions creating a regional housing authority. Each board of supervisors, after a public hearing, must find that (1) insanitary or unsafe inhabited dwellings exist in each respective county or that there is a shortage of safe or sanitary dwellings in such county available to persons of low-income at rents they can afford, and (2) that a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county to carry out the purposes of the Act. Va. Code §§ 36-40 and 36-44. Sections 36-41, 36-42, and 36-44 of the Code of Virginia establish procedures for increasing or decreasing the area of operation of a regional housing authority. A regional housing authority and its commissioners have the same powers within their area of operation as a non-regional housing authority. Va. Code § 36-46.

The governing bodies of two or more municipalities, whether or not contiguous, may create a consolidated housing authority. A consolidated housing authority is a single housing authority operating in two or more jurisdictions. The legal provisions applicable to a regional housing authority are also applicable to a consolidated authority. Va. Code § 36-47. Examples are the Accomack-Northampton Regional Housing Authority and the Cumberland Plateau Regional Housing Authority (which serves Russell, Dickinson, Buchanan, and Tazewell Counties).

3-4.03 Court Challenges

In *Reasor v. City of Norfolk*, 606 F. Supp. 788 (E.D. Va. 1984), the court concluded that there was no violation of the Sherman Act and the Virginia Antitrust Act with respect to a "blackout" agreement between the city and a private developer under which the developer agreed to construct an office building in downtown Norfolk, and the city agreed not to construct, permit the construction of, or provide any financial support for the construction of a certain size office building in a specified downtown area for up to two years after the completion of the developer's office building. The court held that the blackout agreement was authorized by the General Assembly and that, in the Act, the General Assembly clearly articulated its intent that the city engage in redevelopment and conservation activities. The court held further that the General Assembly contemplated that the redevelopment plan would contain anticompetitive measures similar to the blackout agreement.

The legislature must have contemplated that the City would try to encourage private developers to invest heavily in redevelopment and that as part of that encouragement the City would agree not to aid in building competing structures. For example, the City may desire a large hotel to be built in the downtown area. A private investor would build such a building based on the present office needs of the area, which would be low, due to blight. However, the City's redevelopment plan may be more farsighted and thus require a hotel that would not be fully occupied until a number of years after its constructions [sic]. In order to induce the private investor to construct a much larger building than is presently required the City would reasonably be expected to promise some limited form of protection from competition in the first few years after construction of the building. Thus, the challenged blackout agreement and the City's alleged refusal to cooperate with the plaintiffs is a form of limited protection from competition that the legislature must have contemplated when it authorized the City to become involved in redevelopment projects.

Id.

Authorities are exempt from federal antitrust liability under the provisions of the Local Government Antitrust Act of 1984. 15 U.S.C. §§ 34 and 35. The commissioners and other employees of an authority are also protected from federal antitrust suit by this act. 15 U.S.C. § 36(a). However, injunctive relief can be obtained against local governments, as well as employees, officials, and those acting at the direction of a local government, if it can be shown that they have violated antitrust law. See *Command Force Sec., Inc. v. City of Portsmouth*, 968 F. Supp. 1069 (E.D. Va. 1997) (holding that the Local Government Antitrust Act, 15 U.S.C. §§ 34-36, does not bar claims for injunctive relief). Further, the governing body of any jurisdiction located in whole or in part within the area of operation of an authority may lend or donate money to the authority to enable the authority to carry out its purposes and may issue bonds to provide funds for such loans or grants. Va. Code § 36-7.

In *City of Charlottesville v. DeHaan*, 228 Va. 578, 323 S.E.2d 131 (1984), the Supreme Court of Virginia rejected a challenge to the cooperation between a municipality and an authority in achieving a \$23.9 million redevelopment project. The city had authorized the issuance of \$9.5 million in general obligation bonds, the proceeds of which were to be donated to the Charlottesville Redevelopment and Housing Authority to fund a loan by the authority to the private developer. The developer, in turn, had agreed to construct a hotel, a conference center, a parking garage, and an extension of the downtown mall in accordance with, and as the final stage of, a redevelopment project. A local taxpayer challenged the validity of the bonds on the basis that they were issued as a device or pretense to grant the credit of the city "to or in aid of" a private corporation

in violation of Va. Const. art. X, § 10. The trial court agreed and invalidated the bonds. The Supreme Court of Virginia reversed, holding that the trial court erred in its conclusion that the transactions were not animated by a public purpose. The Court concluded instead that the facts of this case indicated “that the City has sought all along to promote its interests and the interests of its citizens rather than to help a private developer make money.” *Id.*

The Virginia Supreme Court has held in a number of cases that incidental benefits to private entities do not render unconstitutional efforts by governmental entities to serve the needs of the government. *Id.*; *Rudder v. Wise Cnty. Redev. & Hous. Auth.*, 219 Va. 592, 249 S.E.2d 177 (1978); *Fairfax Cnty. Indus. Dev. Auth. v. Coyner*, 207 Va. 351, 150 S.E.2d 87 (1966); *Harrison v. Day*, 202 Va. 967, 121 S.E.2d 615 (1961).

3-5 MANAGEMENT OF AN AUTHORITY

3-5.01 Governing Body

A redevelopment and housing authority is governed by a group of not more than nine nor less than five commissioners appointed by the governing body of the city or county that activated the authority.¹ The initial commissioners serve for terms of one, two, three, four, and five years from the date of their appointment. Thereafter, commissioners are appointed for staggered terms of four years each. Should less than nine commissioners initially be appointed, the governing body of the city or county where the authority is located may subsequently increase the number appointed to a maximum of nine. Vacancies must be filled for the unexpired terms of commissioners. Unless the charter of the jurisdiction explicitly provides otherwise, a commissioner may not be an officer or an employee of the city or county for which the authority was created. Va. Code § 36-11. An express provision of a city charter can also be used to permit members of a city council to serve as the commissioners of an authority.

Generally, public housing agencies that receive assistance under the Housing Act of 1937 are required to have at least one person who is “directly assisted by the public housing agency” as a member of the board of directors or similar governing body. 42 U.S.C. § 1437(b)(1)(A). If provided for in the public housing agency plan, that person may be elected by the residents directly assisted by the public housing agency. 42 U.S.C. § 1437(b)(1)(B). This general rule does not apply to public housing agencies located in states that require the governing body members to be salaried and to serve on a full-time basis (not the case in Virginia). 42 U.S.C. § 1437(b)(2)(A). In addition, the rule does not apply to public housing agencies with less than 300 public housing units if the agency has provided reasonable notice to the resident advisory board of the federal requirement and no resident has demonstrated an intent to participate. 42 U.S.C. § 1437(b)(2)(B).

A commissioner may receive a meeting attendance fee as determined by the locality and up to \$500 a month for commission services. Va. Code §§ 36-11, 36-11.1:1. An authority is also permitted to reimburse a commissioner for his necessary expenses, including travel expenses, incurred in the discharge of his duties. Va. Code § 36-11. An authority may pay the legal fees of a commissioner who is sued if the authority determines that the claim involves actions by the commissioner in furtherance of his official duties serving the authority (Va. Code § 15.2-1520; 2013 Op. Va. Att’y Gen. 107), but the authority may not pay the legal fees of a commissioner who instituted an action. 1993 Op. Va. Att’y Gen. 70. Where the authority approves the appointment of counsel to defend a

¹ In an apparent legislative oversight, Va. Code § 36-11 grants authority to appoint commissioners to counties and cities, but not to towns. Towns were given the power to create housing authorities in 2006 and Va. Code § 36-4 was amended accordingly. Section 36-11 was not amended in 2006, however.

commissioner, the authority may pay a judgment entered against the commissioner or any settlement but not punitive damages. *Id.*

A commissioner is barred during the term of his service by the Virginia State and Local Government Conflict of Interests Act (the "Conflict of Interests Act") from obtaining a loan from an authority of which he is an officer or employee, Va. Code § 2.2-3109(A), but there is no statutory prohibition against receipt of such a loan by a former commissioner no longer serving on the board. 1984-85 Op. Va. Att'y Gen. 243. In addition, the Conflict of Interests Act requires all commissioners serving counties, cities, or towns with populations in excess of 3,500 to file a disclosure statement of their personal interests, as a condition of assuming office. Va. Code § 2.2-3115(A). Thereafter, the disclosure statement must be filed annually. *Id.*

A simple majority vote of the commissioners, where a quorum is present, is sufficient to approve any action of an authority. A greater than majority vote may be specified by the bylaws of an authority. A majority of the commissioners constitutes a quorum for all purposes. Va. Code § 36-12.

The officers of an authority, selected from among the commissioners, are a chairman and a vice chairman. An authority may employ a secretary, who will serve as executive director, and such other officers and agents as may be required. The first chairman of an authority is designated by the governing body of the jurisdiction. When the office of the chairman becomes vacant, however, the remaining commissioners may select a chairman from among their members. Va. Code § 36-13. The governing body may remove a commissioner for inefficiency, neglect of duty, or misconduct in office. Va. Code § 36-17. Persons who reside within the boundaries of the area of operation of the authority or within any additional area where the authority is authorized to undertake a housing project may be appointed as commissioners. The commissioners of an authority may meet in either of these areas. Va. Code § 36-18.

3-5.02 Legal Counsel

An authority may use the city attorney of the city or the commonwealth's attorney of the county for such legal services as it may require. Counsel and legal staff may also be directly employed by an authority. Va. Code § 36-14. Under the Virginia Public Procurement Act, an authority is exempt from the requirement of competitive procurement for legal services. Va. Code § 2.2-4344(A)(2). However, because authorities receive funding from the Department of Housing and Urban Development, which is subject to federal procurement regulations set forth at 24 C.F.R. § 85.36, authorities also must comply with the competition requirements under federal law if state procurement law procedures are inconsistent. 24 C.F.R. §§ 85.36(b) and (c). Similarly, if an authority has adopted a written procurement policy, it should follow that policy unless it conflicts with applicable federal procurement regulations. Thus, the Virginia exemption is inapplicable where an authority seeks to obtain legal services that will be paid for with federal funds.

3-5.03 Executive Director

Although not expressly provided by statute, the executive director is typically the chief executive officer of an authority. Va. Code § 36-13. The executive director is employed by the commissioners and serves as secretary of the authority. *Id.* An authority may delegate to one or more agents or employees such powers or duties as it may deem proper. Va. Code § 36-15.

3-6 POWERS OF AN AUTHORITY

3-6.01 Generally

The general powers of a redevelopment and housing authority are set forth in Va. Code § 36-19 as follows:

1. To sue and be sued, to have a seal, to have perpetual succession, to make and execute contracts, and to have bylaws, rules, and regulations.
2. Within its area of operation, to prepare, carry out, acquire, lease and operate housing projects and residential buildings and to provide for the construction, reconstruction, improvement, alteration or repair of same, and to construct, remodel or renovate any public building if requested to do so by the governing body of the jurisdiction.
3. To arrange or contract for the furnishing of services for a housing project or the occupants thereof.
4. In connection with any housing project, to lease or rent any dwelling, to own, hold or improve any real or personal property, to purchase, sell, lease, exchange or dispose of any real or personal property and to acquire real property by the exercise of the power of eminent domain.
5. To invest any funds held in reserve or sinking funds, or any funds that are not required for immediate disbursement, in any property or securities in which savings banks may legally invest and to purchase its bonds at a price not more than the principal amount thereof plus accrued interest.
6. Within its area of operation, to investigate living, dwelling and housing conditions and to make recommendations regarding the means and methods of improving such conditions.
7. To make loans or grants for the prevention and elimination of blighted or slum areas and for assistance in housing construction or rehabilitation by private sponsors.²
8. Within its area of operation, to act as agent for a political subdivision, agency of the Commonwealth or federal agency in making construction or rehabilitation loans to persons of low or moderate income.
9. Within its area of operation, to make grants, loans or refinance loans made by others for assistance in planning, developing, acquiring, constructing, repairing, rehabilitating or maintaining commercial or residential buildings provided that if such structure is not located within a housing project, a redevelopment or conservation project or a rehabilitation district, the prior approval of the governing body of the jurisdiction must be obtained.
10. To borrow money and to issue evidence of indebtedness, to issue bonds and other obligations, and give security therefore.
11. To conduct examinations and investigations, and to make available its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.
12. To form corporations, partnerships, joint ventures, trusts, or other legal entities, on its own behalf or with any person or public or private entity,

² In an effort to prevent foreclosure and assure the continued operation of a project partly financed by an authority, the authority may forgive a loan made to the developer of the property within a redevelopment area. 1998 Op. Va. Att'y Gen. 96.

with the approval of the local governing body or its designee. See *Carnell Construction Corp. v. Danville Redevelopment & Housing Authority*, 745 F.3d 703 (4th Cir. 2014), for a case describing a housing authority's formation of a limited liability company to obtain and distribute tax credits to private investors as allowed by the Hope VI Program established by HUD.

13. To exercise all or any part or combination of the powers set forth above.

Virginia Code § 36-19 also provides that “[n]o provisions of law with respect to the acquisition, operation or disposition of property by other political subdivisions or public bodies shall be applicable to an authority unless the legislature shall specifically state.” The General Assembly has made all housing projects of an authority subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations of the jurisdiction where the housing project is situated. Va. Code § 36-28. A second restriction placed on authorities is that an authority must have the approval of the governing body of the jurisdiction within which the authority is authorized to transact business and exercise powers for the construction of any additional housing. This restriction extends to the acquisition of land and the purchase of material for the construction or installation of any sewers, streets, sidewalks, lights, power, water, or any other facilities for such additional housing. Va. Code § 36-19.2(A). A further limitation can be found in Va. Code § 36-19.2(B), where an authority must hold a public hearing before giving final approval to its budget or submitting a request for funding to the governing body. Finally, authorities are also expressly made subject to the provisions of the Virginia Public Procurement Act. Va. Code §§ 2.2-4300 to 2.2-4377.

In undertaking redevelopment projects, an authority may exercise all powers that it possesses in connection with slum clearance and housing projects, as well as numerous additional powers. Va. Code §§ 36-49, 36-49.2, 36-50, and 36-53. Similar, but less extensive, powers are conferred upon authorities in connection with conservation projects and rehabilitation districts. Va. Code §§ 36-49.1, 36-50.1, 36-52.3, and 36-53. For a more detailed description of the powers of an authority as to redevelopment and conservation projects, rehabilitation districts, and spot blight abatement, see section 3-8.

3-6.02 Operations in Other Jurisdictions

A redevelopment and housing authority may exercise its powers within the boundaries of any municipality not included within the area of its operation for the purpose of developing and operating a housing project or multifamily residential building, provided the governing body of the municipality and the authority in such municipality (if one has been established) adopt resolutions declaring that there is a need for the outside authority to exercise its power within the municipality. The governing body of the municipality must hold a public hearing before adoption of this resolution. The clerk of the municipality is required to give notice of the time, place, and purpose of the public hearing at least seven days before the date of the hearing in a newspaper published in the municipality or in a newspaper having a general circulation in the municipality. In its resolution, the governing body must find (1) that unsanitary or unsafe inhabited dwellings exist in the municipality or that there is a shortage of safe or sanitary dwellings in the municipality available to persons of low-income at rentals they can afford; and (2) that these conditions can best be remedied through the exercise of the outside authority's powers within the territorial boundaries of the municipality. Va. Code § 36-23. A local, regional, or consolidated housing authority may not operate throughout the entire Commonwealth without first complying with the procedures for authorization of such actions as required by Va. Code § 36-23; see 2012 Op. Va. Att'y Gen. 101.

3-6.03 Cooperation of Authorities

Any two or more authorities are specifically empowered to join or cooperate with one another in the exercise of their powers for the purpose of financing, planning, undertaking, owning, constructing, or operating a housing project located within the area of operation of any one or more of such authorities. Va. Code § 36-24.

3-6.04 Payments by Authorities and Receipt of Aid from Local, State and Federal Governments

An authority is permitted to make payments to the city or county that created it, to the State or to any political subdivision of the State consistent with maintaining the low-rental housing projects or otherwise in furtherance of the purposes of the Act. Va. Code § 36-25. The ability of an authority to accept loans or grants of funds from jurisdictions in which it operates is inferred from Va. Code § 36-7, which empowers cities, counties, and towns to make such loans and grants. Authorities are also empowered to accept funds from any public or private source in carrying out redevelopment and conservation projects. Va. Code §§ 36-49(A)(7) and 36-49.1(A)(5). In addition, authorities are empowered to borrow money or accept contributions, grants, or other financial assistance from the federal government in connection with a housing project within its area of operation. Va. Code § 36-26.

3-6.05 Eminent Domain

Redevelopment and housing authorities may exercise the power of eminent domain in connection with housing projects, Va. Code § 36-19(4); redevelopment projects, *id.* §§ 36-50 and 36-52.2; conservation projects, *id.* §§ 36-50.1 and 36-52.2; and spot blight abatement. *Id.* § 36-49.1:1. As previously observed, an authority's eminent domain powers with respect to conservation projects are limited. Va. Code §§ 1-237.1 and 36-50.1. Pursuant to Va. Code § 36-27, an authority has the power to acquire any real property that may be necessary to achieve its purposes under the Act through the use of the eminent domain procedures set out in Title 25.1, Chapter 2 of the Code of Virginia. See [Chapter 4, Condemnation Procedure Under the General Condemnation Act](#) generally and section 4-2.02(f) specifically. However, the property that may be acquired under the power of eminent domain is limited to property within the area of operation of the authority. 1979-80 Op. Va. Att'y Gen. 195. Whether an area qualifies for redevelopment is the authority's decision, not the locality's decision. *City of Roanoke Redev. & Hous. Auth. v. B&B Holdings*, 79 Va. Cir. 495 (City of Roanoke 2009) (court found city "pressure" on designation of area indicative that blight might not exist) (citing *Bristol Redev. & Hous. Auth. v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956)).

An authority is not, as distinguished from counties, cities, and towns, empowered to acquire property by eminent domain under the "quick take" provisions. See Va. Code § 25.1-300 et seq. A jurisdiction may, however, exercise the power of eminent domain to acquire property not otherwise available to an authority and subsequently convey it to an authority.

The Supreme Court of Virginia upheld the constitutionality of the grant of power of eminent domain by the General Assembly to housing authorities in *Mumpower v. Housing Authority of Bristol*, 176 Va. 426, 11 S.E.2d 732 (1940). In *Bristol Redevelopment & Housing Authority v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956), the Court held that the condition of the area in which such property is located, and not the condition of individual structures, is the basis of the jurisdiction and power of a housing authority to acquire property by eminent domain. A current study cataloging blighted conditions is required. *Richmond Redev. & Hous. Auth. v. Mutual Benefit/Marriott Hotel Associates-I, L.P.*, No. CF-932-1 (City of Richmond Cir. Ct. 1999). When there is a question as to whether an area as a whole is blighted, an evidentiary hearing may be necessary. *Rudder v. Wise Cnty. Redev. & Hous. Auth.*, 219 Va. 592, 249 S.E.2d 177 (1978); *Runnels v. Staunton*

Redev. & Hous. Auth., 207 Va. 407, 149 S.E.2d 882 (1966). If the area is not blighted or deteriorated as defined in the statute, the power of eminent domain cannot be employed. A circuit court found that Va. Code § 36-49(1), not § 36-48, articulates the standard by which blight must be measured (condition detrimental to health and safety rather than menace to). *City of Roanoke Redev. & Hous. Auth. v. B&B Holdings*, 79 Va. Cir. 495 (City of Roanoke 2009).

If property located in a conservation or rehabilitation plan area is condemned within five years after the adoption of the plan and the property was downzoned within five years prior to the adoption of the plan (1) without the express consent of the property owner and (2) not as a part of a comprehensive rezoning of the locality, then the date of valuation of the property is the day before the property was downzoned, if the property owner at the time the condemnation proceeding is initiated is the same owner as at the time of the downzoning. Va. Code § 25.1-107(B). Even if the property was part of a comprehensive rezoning, if any downzoning without the express consent of the property owner occurs after the adoption of a conservation or rehabilitation plan, then the date of valuation for any condemnation is the date the conservation or rehabilitation plan was adopted, if the owner at the time of the condemnation and downzoning is the same. Va. Code § 25.1-107(A). In both instances, the body determining just compensation may offset the valuation amount by the estimated difference between the amount of real estate taxes that the owner would have paid had the downzoning not occurred and the amount of real estate taxes assessed against the property since the date of the downzoning. Va. Code § 25.1-107(C).

Under Va. Code § 36-27, the court in which a condemnation proceeding is pending may hear evidence to determine whether there has been unreasonable delay by the authority in commencing the suit after publicly announcing the project. If the court determines that the authority did unreasonably delay commencing the suit, the court is required to instruct the commissioners to award to the landowner damages suffered, if any, because of the authority's delay in instituting the proceedings. These damages may not exceed the change in fair market value of the property during the period of the delay.

In *Pearsall v. Richmond Redevelopment & Housing Authority*, 218 Va. 892, 242 S.E.2d 228 (1978), the Court held that the question of whether there has been an unreasonable delay is a question of fact to be decided by the trial court. The Court also held that there can be no public announcement until there is a project, and that there can be no project until the governing body of the jurisdiction approves a redevelopment plan. Hence, the public announcement by the authority can take place no earlier than the date the local governing body approves the redevelopment plan. Thus, an authority may not be charged with damages from condemnation blight suffered before the date of the governing body's approval of the plan.

A circuit court held a temporary inverse condemnation had occurred when an owner was notified that the authority would not acquire the property twenty-four years after it publicly identified the property as "property to be acquired" for a redevelopment project. *Claytor v. Roanoke Redev. & Hous. Auth.*, 95 Va. Cir. 527 (City of Roanoke 2004) (subsequent jury award in the amount of \$282,000 plus interest and attorneys' fees). The court held that the claim was similar to *Pearsall* except that the condemnation did not ultimately occur. *But see BWT, LLC v. Norfolk Redev. & Hous. Auth.*, 57 Va. Cir. 121 (City of Norfolk 2001) (no inverse condemnation claim for diminished value while housing project being completed).

The Supreme Court of Virginia has found that condemnation of blighted property within a conservation district instituted fifteen years after the authority made its findings of blight did not violate the due process clauses of the Constitutions of the United States

and the Commonwealth of Virginia. *Norfolk Redev. & Hous. Auth. v. C & C Real Estate, Inc.*, 272 Va. 2, 630 S.E.2d 505 (2006). However, the Supreme Court did hold that the authority had failed to provide the property owner with notice stating the deficiencies that caused the property not to comply with the standards adopted in the conservation plan and an opportunity to cure those deficiencies as required by Va. Code § 36-50.1(2). As a result, the Supreme Court held that the authority was precluded from maintaining the condemnation action.

In 2005, the United States Supreme Court held that the City of New London, Connecticut could exercise its eminent domain power to seize private homes when the city's economic development plan called for commercial development in an area where private, non-blighted, homes were located. *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655 (2005). While the majority opinion in *Kelo* essentially held that economic development takings are constitutional because they satisfy the Public Use Clause of the Constitution, the majority also emphasized that state legislatures are not precluded from placing additional restrictions on the taking of private property. More than forty states responded with legislation imposing limitations on the exercise of eminent domain. The General Assembly enacted a code section with "limitations on eminent domain," Va. Code § 1-219.1. As of July 1, 2007, redevelopment and housing authorities no longer may use eminent domain to acquire property in a redevelopment or conservation area unless the parcel to be acquired is itself blighted under a narrower definition of blighted property, i.e., property that endangers public health or safety and constitutes a public nuisance, or is "beyond repair or unfit for human occupancy or use." Va. Code § 36-50.1. The legislation generally prohibits condemnation unless the public interest dominates the private gain and the primary purpose is not for private financial gain, private benefit, an increase in tax base or tax revenues, or an increase in employment. Note that while the broader powers of Va. Code § 36-27 are still in the Code, to the extent they are inconsistent with § 1-219.1, the latter provision controls by virtue of § 1-219.1(H).

An amendment to Section 11 of Article 1 (Bill of Rights) of the Constitution of Virginia was approved by voters on November 6, 2012, after having been approved by the Virginia General Assembly. The amendment prohibits eminent domain from being used for private enterprise, job creation, tax revenue generation or economic development, thereby restricting its use to the taking of private land for public use. See Chapter 4, Condemnation Procedure Under the General Condemnation Act, section [4-1.02](#).

3-6.06 Issuance of Bonds

Redevelopment and housing authorities are empowered to borrow money or to issue their bonds under three different provisions of the Act. Va. Code § 36-19(10) permits an authority to "borrow money and issue evidence of indebtedness in the name of and for the use of the housing authority subject to such limitations as may be imposed by law." Under Va. Code § 36-50, an authority is specifically empowered to issue bonds and other obligations in undertaking redevelopment projects. A general grant of power is contained in Va. Code § 36-29, which provides that "[a]n authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes." Virginia Code §§ 36-30 and 36-34 provide for the form and provisions of the bonds that may be issued. Remedies of the bondholders are set forth at §§ 36-32 and 36-33. The constitutionality of an authority's power to issue bonds was upheld in *Mumpower v. Housing Authority of Bristol*, 176 Va. 426, 11 S.E.2d 732 (1940).

An authority may issue bonds providing for the payment of principal and interest from (1) the income and revenue of the housing project financed with the bond proceeds, (2) the income and revenue of designated housing projects whether or not they are financed by the proceeds of such bonds, or (3) the general revenue of the authority. An authority may also issue bonds on which the principal is payable solely from annual contributions or

grants received from the federal government or from any other public or private source. Refunding bonds for the purpose of retiring previously issued bonds or to refund loans made by another entity, if such loans could have been made by the authority, is also authorized. Va. Code § 36-29.

In connection with the issuance of its bonds, an authority has the following powers under Va. Code § 36-31:

1. To pledge all or any part of its rents, fees, or revenue to the payment of the bonds;
2. To mortgage all or any part of its real or personal property;
3. To limit future pledges of its rents, fees, revenues, or property;
4. To agree as to the bonds to be issued and as to issuance of bonds in escrow, and to make provisions for the replacement of lost, destroyed or mutilated bonds;
5. To agree as to the rents and fees to be charged in the operation of a housing project;
6. To provide for the amendment of the contract with the bondholders;
7. To agree as to the use of all of its real or personal property or the replacement thereof;
8. To reach agreement as to the rights, liabilities, powers and duties arising upon a default;
9. To vest in a trust or trustees or in the bondholders the right to enforce the payment of the bonds; and
10. To exercise all or any part of the powers set forth above.

Neither the commissioners of an authority nor any person executing the bonds is personally liable on the bonds by reason of their issuance. *Id.* The bonds and other obligations of an authority are required to state on their face that they:

Shall not be a debt of the city, the county, the Commonwealth or any political subdivision thereof (other than the authority) and neither the city or the county nor the Commonwealth or any political subdivision thereof (other than the authority) shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

Id.

The Supreme Court of Virginia has held that, because of this language, bonds issued by an authority are not bonds of the jurisdiction in which the authority operates and, therefore, such bonds do not count against such jurisdiction's debt limitations. *Mumpower v. Hous. Auth. of Bristol*, 176 Va. 426, 11 S.E.2d 732 (1940).

The provisions of the Act governing the types of bonds that may be issued by any authority are general and permissive. The bonds may be issued in one or more series. The authority, by resolution, establishes the issuance date, date of maturity, interest rate,

denomination, and certain other conditions applicable to the bonds. The bonds cannot be sold for less than their par value. Va. Code § 36-30.

If an authority defaults on the payment of its bonds, the bondholders have the right either to bring suit at law or in equity to compel the authority to perform the covenants contained in the bonds or to bring a suit for the purpose of enjoining any acts that violate their rights under the bonds. Va. Code § 36-32. Upon default, the authority may agree that a housing project can be turned over to the bondholders or that the bondholders may obtain the appointment of a receiver to receive the rents and profits from such project. Va. Code § 36-33.

Municipal corporations, political subdivisions (other than redevelopment and housing authorities), banks, trust companies, savings banks and institutions, and insurance companies, among others, may legally invest in housing bonds. Va. Code § 36-34. The holders of many types of housing authority bonds do not pay either federal or state income tax on the interest earned on the bonds. I.R.C. § 103; Va. Code §§ 58.1-322.02(2) and 58.1-402(C)(2).

The Virginia Public Building Authority may refinance bonds issued by local redevelopment authorities if such obligations are secured by a lease or other payment agreement with the Commonwealth. Va. Code § 2.2-2270.

3-6.07 Rural Housing Projects

County housing authorities and regional housing authorities are specifically empowered to borrow money, to accept grants, and to exercise the other powers possessed by authorities to provide housing for low-income farmers. Va. Code § 36-36.

3-6.08 Judicial Review

The same principles of judicial review that apply to the review of legislative acts of municipalities also apply to the review of acts of a redevelopment and housing authority. *Bristol Redev. & Hous. Auth. v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956); *City of Roanoke Redev. & Hous. Auth. v. B&B Holdings*, 79 Va. Cir. 495 (City of Roanoke 2009). All judicial presumptions are in favor of the validity of an authority's exercise of its discretion. The burden is upon the person complaining of the exercise of such power to establish the invalidity of the authority's actions by clear and convincing evidence. To succeed, the plaintiff must allege and prove that the authority's actions were unlawful, fraudulent, dishonest, or arbitrary. *Rudder v. Wise Cnty. Redev. & Hous. Auth.*, 219 Va. 592, 249 S.E.2d 177 (1978); *Runnels v. Staunton Redev. & Hous. Auth.*, 207 Va. 407, 149 S.E.2d 882 (1966). See *City of Charlottesville v. DeHaan*, 228 Va. 578, 323 S.E.2d 131 (1984); *Taylor v. Cnty. Bd. of Arlington*, 189 Va. 472, 53 S.E.2d 34 (1949).

In *Fairfax County Redevelopment & Housing Authority v. W. M. Schlosser Co.*, 64 F.3d 155 (4th Cir. 1995), the Fourth Circuit held that state administrative claims may be heard under federal diversity jurisdiction only to the extent the federal district court can hear the matter de novo. Pursuant to Va. Code § 11-71 (recodified as Va. Code § 2.2-4365), the housing authority had appealed to a state circuit court as arbitrary and capricious an administrative award to a contractor. The contractor removed to federal district court, which reviewed the case under its diversity jurisdiction. The Fourth Circuit held that a federal district court has no jurisdiction to review state administrative action under an appellate standard of review, citing *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S. Ct. 1098 (1943).

In *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 118 S. Ct. 523 (1997) (denial of demolition permit), the United States Supreme Court held federal courts have jurisdiction supplemental to their federal question jurisdiction to conduct an

on-the-record review of local administrative decisions. The Court noted, however, that while the deferential nature of a review of state administrative claims did not bar supplemental jurisdiction, the principles of abstention as expounded in *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706, 116 S. Ct. 1712 (1996), may result in the state claims not being heard. The majority expressly left open whether a state law claim (like that in *Schlosser, supra*) for on-the-record review, if brought alone, would substantiate the Court's original diversity jurisdiction.

3-7 HOUSING

3-7.01 In General

One reason Congress encouraged the creation of redevelopment and housing authorities was to provide local mechanisms through which decent, safe, and sanitary housing could be provided to low-income persons. Congress also promotes the construction and redevelopment of low-income housing projects by means of the low-income housing tax credits provided under Section 42 of the Internal Revenue Code of 1986, as amended. Although authorities have become increasingly active in the commercial redevelopment of inner cities, the development and operation of housing projects continues to be a primary concern of authorities.

3-7.02 Federal Law Concerns

3-7.02(a) Case Law

In the 1960s, the federal courts began to hold that tenants in federally funded housing projects could not be evicted without due process. In *Holt v. Richmond Redevelopment & Housing Authority*, 266 F. Supp. 397 (E.D. Va. 1966), the federal district court held that a tenant's continuing occupancy in a housing project may not be conditioned upon the tenant foregoing his constitutional rights. By 1970, the courts were holding that an authority could not evict a tenant without cause and without a due process hearing. *Caulder v. Durham Hous. Auth.*, 433 F.2d 998 (4th Cir. 1970). Due process has been held to require that, before an authority acts to evict a tenant, the authority must give the tenant notice stating good cause for the eviction and prove in court that such good cause exists. *Joy v. Daniels*, 479 F.2d 1236 (4th Cir. 1973). An illegal act by a tenant, such as the sale of alcoholic beverages in the tenant's unit, is sufficient cause for eviction. *Newport News Redev. & Hous. Auth. v. Hunter*, 219 Va. 629, 249 S.E.2d 185 (1978). In *Richmond Tenants Organization v. Kemp*, 956 F.2d 1300 (4th Cir. 1992), the Fourth Circuit considered the constitutionality of the National Public Housing Asset Forfeiture Project, which authorizes the seizure of the leaseholds of public housing tenants without prior notice and an opportunity to be heard if any leasehold resident is suspected of drug-related activity. The court determined that no-notice removal of tenants without a pre-deprivation hearing violates the constitutional right of due process and that procedural due process requires notice and an opportunity to be heard before the seizure of property, except in extraordinary situations.

The Supreme Court in *HUD v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230 (2002), held that 42 U.S.C. § 1437d(l)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests, whether or not the tenant knew, or should have known, about the activity. The Court further found that the provision raised no constitutional due process concerns.

In *Richmond Tenants Organization v. Richmond Redevelopment & Housing Authority*, 751 F. Supp. 1204 (E.D. Va. 1990), the court considered a challenge to various provisions of a new dwelling lease including those that (1) required tenants to refrain from the illegal use, sale or distribution of drugs and alcoholic beverages off the premises and (2) prohibited the possession of any weapon of any type. After striking the specified provisions as unreasonable, the court held the other lease provisions complied with the

requirements of the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., which provides that public housing leases may not contain unreasonable terms. 42 U.S.C. § 1437d(l)(1). To be reasonable, the court concluded that lease terms must be rationally related to a legitimate housing purpose. The court held further that the lease provisions, as modified, were rationally related to the authority's legitimate interest in reducing crime and theft in the housing developments. *Richmond Tenants Org. v. Richmond Redev. & Hous. Auth.*, 751 F. Supp. 1204 (E.D. Va. 1990).

The Virginia Residential Landlord and Tenant Act prohibits a provision in a rental agreement whereby a tenant agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual rental units, unless such provision is required by federal law or regulation. Va. Code § 55.1-1208.

In *Clark v. Alexander*, 894 F. Supp. 261 (E.D. Va. 1995), the federal district court held that an estranged husband can be a family member, even if not listed on housing authority documents, such that eviction of the wife was proper when the husband was convicted of drug offenses after drugs were found in her apartment. The Fourth Circuit upheld the district court's deference to the housing authority's reasonable determination of who was a family member. 85 F.3d 146 (4th Cir. 1996).

See also *Koroma v. Richmond Redev. & Hous. Auth.*, No. 3:09cv736 (E.D. Va. Apr. 27, 2010) (no private right of action created under § 1983 to redress alleged violations of the portability provisions of the Section 8 Housing Choice Voucher program).

3-7.02(b) Federal Regulation

In 1975, faced with increased judicial intervention, the United States Department of Housing and Urban Development (HUD) promulgated regulations establishing uniform lease and grievance procedures for tenants in public housing. Public Housing Lease and Grievance Procedures, 24 C.F.R. §§ 966.1-966.57. The HUD procedures set forth both provisions that must be included and those that may not be contained in leases.

Pursuant to 24 C.F.R. § 966.4(a)(b)(c) and (d), each lease must contain provisions:

- Identifying the parties, dwelling unit, and term.
- Stating the payments due under the lease, including the monthly rental amount and any utility or maintenance charges that are to be billed to the tenant. The authority may, at its option, include certain provisions imposing a penalty for late payment of rent and requiring security deposits of limited amounts.
- Providing for the redetermination of rent and family composition.
- Setting forth the tenant's right to use and occupy the unit.

Pursuant to 24 C.F.R. § 966.4(e), under the lease an authority is obligated to:

- Maintain the premises in decent, safe, and sanitary condition.
- Comply with requirements of applicable building codes, housing codes and HUD regulations.
- Make necessary repairs to the premises.
- Keep common areas in a clean and safe condition.
- Maintain the facilities and appliances in the unit in a clean and safe condition.
- Provide and maintain appropriate waste receptacles.
- Supply running water and reasonable amounts of hot water, and reasonable amounts of heat at appropriate times of the year, to the unit.

- Notify tenant of the specific grounds for any proposed adverse action of the authority.
- Consider lease bifurcation in circumstances involving domestic violence, dating violence, or stalking.

Pursuant to 24 C.F.R. § 966.4(f), a tenant is required to:

- Not assign the lease or to sublease the premises.
- Not provide accommodations for boarders or lodgers.
- Use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not for any other purpose.
- Abide by necessary and reasonable regulations promulgated by the authority.
- Comply with all obligations imposed on the tenant by building and housing codes.
- Keep the premises in a clean and safe condition.
- Dispose of all waste in a safe and sanitary manner.
- Use all utilities in a reasonable manner.
- Refrain from damaging the property.
- Pay reasonable charges for the repair of damage to the property.
- Conduct himself in a manner that will not disturb his neighbors.
- Refrain from, and cause members of the tenant's household and guests to refrain from, engaging in illegal activities on the premises.

Pursuant to 24 C.F.R. § 966.4(l), the following provisions must be observed by an authority in terminating the lease of a tenant:

- The authority may not terminate or refuse to renew a lease other than for serious or repeated violation of material terms of the lease, for being over the income limit for the program, as provided in 24 C.F.R. § 960.261, or for other good cause.
- The authority must give written notice of termination.
- The notice of termination to the tenant shall state the reasons for the termination and shall inform the tenant of the right to reply and the right to examine the authority's documents directly relevant to the termination or eviction. If the authority is required to afford the tenant the opportunity for a grievance hearing, the notice must also inform the tenant of the right to request a hearing in accordance with the authority's grievance procedure.³

The lease may not contain the following provisions: confession of judgment, distraint for rent or other charges, exculpatory clauses, waiver of legal notice of actions for eviction or money judgments, waiver of legal proceedings, waiver of jury trial, waiver of right to appeal outcome of judicial proceedings, or provisions requiring the tenant to pay all costs of legal proceedings despite the outcome of such proceedings. 24 C.F.R. § 966.6.

The regulations also provide for a grievance procedure by which disputes between the tenant and the authority may be resolved. In Virginia, since the tenant cannot be evicted without a court proceeding, an authority is not required to resort to the grievance

³ In *Richmond Redevelopment Housing Authority v. Tyson*, 82 Va. Cir. 297 (City of Richmond 2011), the court held that federal regulations do not require that the specific grounds for eviction be stated in the notice when the reason for lease termination is criminal activity or illegal drug related activity.

procedure in certain cases. 24 C.F.R. § 966.51(a). The Legal Services Corporation may not provide representation in eviction proceedings to persons charged with or convicted of illegal drug activities. 45 C.F.R. §§ 1633.1-1633.4.

3-7.03 State Law Concerns

As previously noted, a redevelopment and housing authority may not construct additional housing until such additional housing has been authorized or approved by the governing body of the jurisdiction in which the authority operates. Va. Code § 36-19.2. An authority's projects must also comply with local planning, zoning, sanitary, and building codes. Va. Code § 36-28.

An authority may not operate a housing project for profit. *Jarrett v. Norfolk Redev. & Hous. Auth.*, 169 F.2d 409 (4th Cir. 1948). However, it may charge rents sufficient to establish certain reserves. *Jarrett v. Norfolk Redev. & Hous. Auth.*, 169 F.2d 409 (4th Cir. 1948). Property of an authority that does not produce a profit is exempt from state and local taxation, but property that produces a profit is not exempt. *Mumpower v. Hous. Auth. of Bristol*, 176 Va. 426, 11 S.E.2d 732 (1940). The General Assembly may authorize any county, city, town, or regional government to impose a service charge upon an authority for services it receives. Va. Const. art. X, § 6(g).

By state law, only low-income tenants may reside in a housing project owned by an authority. Va. Code § 36-22. The Virginia Residential Landlord and Tenant Act applies to public housing or other housing units except to the extent the provisions of the Act are inconsistent with regulations of the Department of Housing and Urban Development. Va. Code § 55.1-1201(A).

Unlike municipalities, an authority may enter into long-term leases, i.e., greater than forty years, and it does not have to advertise and receive public bids on leases in excess of five years.⁴ Properties leased by an authority to private tenants are subject to real estate taxes assessed by the local jurisdiction. Va. Code §§ 36-50 and 58.1-3200. Leases with terms of less than fifty years pay 2 percent less real estate taxes each year. Va. Code § 58.1-3203. Thus, long-term leases between authorities and tenants can increase a locality's tax base.

In 1997, the Richmond Redevelopment and Housing Authority privatized some streets in its public housing projects. The authority's intent in privatizing the streets was to enforce trespassing laws banning unauthorized nonresidents from the projects to reduce crime, protect property, and preserve the peace. In *Commonwealth v. Hicks*, 264 Va. 48, 563 S.E.2d 674 (2002) (5-2), the Virginia Supreme Court held that the authority's trespassing policy was an unconstitutional violation of the First Amendment right of free speech because of the unfettered discretion of a housing authority official to decide whether nonresidents were authorized to be present and what conduct was permissible. The United States Supreme Court overruled the Virginia Supreme Court, holding that the overbreadth doctrine did not apply because the trespass policy, taken as a whole, was not substantially overbroad judged in relation to its plainly legitimate sweep. *Virginia v. Hicks*, 539 U.S. 113, 123 S. Ct. 2191 (2003). On remand, the Virginia Supreme Court held the authority's policy was not void for vagueness under the Fourteenth Amendment and did not violate that Amendment's guarantee of the right of association. *Commonwealth v. Hicks*. 267 Va. 573, 596 S.E.2d 74 (2004).

Post-*Hicks*, the General Assembly adopted Va. Code § 36-22.1 which provides that each housing authority shall adopt a "no trespass" policy designed to deny access to

⁴ See Va. Const. art. VII, § 9 for restrictions on municipalities.

nonresidents who enter the premises for unlawful purposes or without any lawful purpose. The policy must consider the privatization of streets as a means of achieving that goal.

Virginia Code § 15.2-1717.1 authorizes any locality by ordinance to establish a procedure whereby lessees, custodians, and persons lawfully in charge of real property may give local law-enforcement personnel the authority to determine who may go or remain on the subject real property. The Virginia Court of Appeals has held that police are implicitly authorized under Va. Code § 15.2-1704 to act as agents for an apartment manager of a federally subsidized housing complex for purposes of issuing written barment notices to unauthorized persons on the property. *Holland v. Commonwealth*, 28 Va. App. 67, 502 S.E.2d 145 (1998), citing *Daniel v. City of Tampa*, 38 F.3d 546 (11th Cir. 1994); see also *Collins v. Commonwealth*, 30 Va. App. 443, 517 S.E.2d 277 (1999); Va. Code § 55.1-1246 (barment under the Residential Landlord and Tenant Act).

3-7.04 Housing Programs Financed by the Federal Government

Under the United States Housing Act of 1937, the federal government was authorized to make funds available to local housing authorities for the purpose of providing decent, sanitary, and safe housing to low-income persons. A detailed description of the programs currently financed by the federal government is beyond the scope of this discussion. Generally, the programs include:

3-7.04(a) Traditional public housing

Under this program, an authority constructs a housing development or project for low-income persons. HUD issues its tax-exempt bonds or notes and makes the proceeds available to the authority for construction of the project. Most of the housing projects built prior to the 1970s were funded in this manner. Direct HUD funding remains available at the present time but on an extremely limited basis.

3-7.04(b) Private market leased housing

In the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301 - 5320, Congress rewrote the United States Housing Act of 1937 and placed major emphasis on leased housing. The primary federal vehicle for financial assistance to tenants in leased housing is the Section 8 Housing Assistance Payments Program. Although new construction of rental housing and rehabilitation grants were popular parts of the Section 8 Program for several years, these aspects of the program have now been phased out. As currently enacted, the major component of the Section 8 Program (now called Housing Choice Voucher Program) addresses existing housing. Under this program, HUD is authorized to enter into annual contributions contracts with an authority pursuant to which the authority may enter into contracts to make assistance payments to owners of existing dwelling units. Under the contract, the owner of a new or rehabilitated housing unit is paid the difference between the fair market rent for the unit and the greater of 30 percent of the tenant's adjusted income or 10 percent of gross income. 42 U.S.C. § 1437f. The intent of the program is to coordinate the private housing market with the needs of low-income persons. In jurisdictions where an authority has not been activated, this program is administered by HUD. There are portability features in this program that would enable the tenant to move from one landlord to another and have the subsidy paid to the current landlord. HUD also allows for up to 15 percent of an authority's vouchers to be project-based or structure-based. *Id.*

3-7.04(c) Homeownership Programs

HUD has adopted a Hope for Public Housing Homeownership program to encourage eligible families in leased housing to become homeowners. 42 U.S.C. § 1437aaa. Housing authorities may apply for grants, at least 25 percent of which must be matched by non-federal sources. Eligible families are not required to expend more than 30 percent of their adjusted income per month for this housing.

3-7.04(d) Federal Low-Income Housing Tax Credits

Under the low-income housing tax credit program established by § 42 of the Internal Revenue Code, Virginia has a certain per capita dollar amount of low-income housing tax credits to be allocated each calendar year, pursuant to § 42(h)(3)(C)(i). Redevelopment and housing authorities may sponsor applications that typically compete in the local housing authorities' pool of tax credits available each year through the Virginia Housing Development Authority. See [Plan of the Virginia Housing Development Authority for the Allocation of Low-Income Housing Tax Credits](#) (updated Jan. 2022). Also, any locality may create a local housing rehabilitation zone, under Va. Code § 36-55.64, and may establish by ordinance incentives such as a reduction in permit fees.

The Inspector General Act of 1978 provides the Inspector General's Office with jurisdiction to audit and investigate the programs and operations of all public housing authorities that receive funding from the federal government. 5 U.S.C. App. 3 § 6.

3-8 REDEVELOPMENT PROJECTS**3-8.01 In General**

The Act specifies four types of areas within which redevelopment and housing authorities may conduct redevelopment projects. These areas are redevelopment areas, conservation areas, rehabilitation districts, and areas of spot blight. Within the first three areas, an authority exercises both its general powers and a broad range of specific powers in executing projects consistent with the purposes of the Act. See Va. Code §§ 36-48, 36-48.1, 36-49, 36-49.1, 36-49.2, 36-50, 36-50.1, 36-52.3, and 36-53. An authority is limited in its powers with regard to spot blight. Va. Code § 36-49.1:1.

3-8.02 Redevelopment Areas

A redevelopment area is an area (including slum areas) within a jurisdiction designated by an authority that is in a state of blight that meets the criteria for a blighted area set forth in Va. Code §§ 36-3 and 1-219.1. Va. Code §§ 36-3 and 36-48.

Following the approval of a redevelopment area by the governing body of the jurisdiction, a redevelopment plan must be developed. This plan may be prepared by the authority or it may be prepared by another planning agency. The plan must provide an outline for the development or redevelopment of the area and indicate (1) the relationship of the plan to community objectives; (2) the proposed land use and building requirements; (3) the land in the area the authority does not intend to acquire; (4) the land to be made available after acquisition to nongovernmental persons or entities for redevelopment and that which is to be made available to public enterprises; (5) anticipated funding sources for the acquisitions; and (6) the method for the temporary relocation of persons living in the area. Va. Code § 36-51(A). The redevelopment plan need not indicate and is not required to have a relationship to all the community objectives identified. *Runnels v. Staunton Redev. & Hous. Auth.*, 207 Va. 407, 149 S.E.2d 882 (1966). After development, the plan must be approved by the governing body of the jurisdiction or by another agency empowered to so act. Va. Code § 36-51.

Prior to the adoption of a redevelopment plan the authority must send by certified mail to the owner of every parcel of property to be acquired a notification of the proposed acquisition and the owner's right to appear in any condemnation proceeding. At the time it makes its price offer, the authority must provide the owner with a fair market value certificate by a certified appraiser. Va. Code § 36-27. If the authority determines after making its price offer not to acquire the property, it must reimburse the landowner reasonable expenses incurred by the landowner in connection with the proposed acquisition, if the landowner makes a written request for such within one year after being notified the authority will not purchase the land. Va. Code § 36-51(E).

Upon the adoption of the plan, the authority is empowered, among other things, to (1) acquire blighted or deteriorated areas; (2) acquire other real property for the purpose of removing the blight; (3) acquire real property where title conditions, diverse ownership, street or lot layout, or other conditions prevent proper development, (4) permit the preservation of historic structures; (5) provide for the conservation of portions of the area; (6) make acquired property available to private enterprise or public agencies in accordance with the redevelopment plan; (7) make loans or grants in the redevelopment project area for the purpose of facilitating construction, rehabilitation or sale of housing or other improvements; (8) acquire, construct or rehabilitate low-, moderate-, and middle-income residential housing developments; and (9) do any and all things necessary to carry out a redevelopment project. Va. Code § 36-49. The authority may also exercise its general powers, including the power to acquire blighted property by eminent domain in a redevelopment area. Va. Code § 36-50. An authority can even “retake” property previously condemned after amending its redevelopment plan to change the proposed use of property. *Richmond Redev. Hous. Auth. v. Mutual Benefit/Marriott Hotel Associates-L.L.P.*, No. CF-932-1 (City of Richmond Cir. Ct. 1999). The terms and conditions under which an authority may make land in a redevelopment project available to nongovernmental persons or entities are further defined in Va. Code § 36-53.

The authority must reaffirm the redevelopment plan within three years of the original approval of the plan. If it fails to do so, it may no longer acquire any property provided for in the plan unless condemnation proceedings have already begun or the parties agree. All property in the plan must be acquired within five years, unless condemnation proceedings have begun or the parties agree. An authority may adopt a new redevelopment plan that includes property contained in a previously adopted plan. Va. Code § 36-51(B)-(D).

The Supreme Court of Virginia held an authority’s redevelopment powers to be constitutional in *Hunter v. Norfolk Redevelopment & Housing Authority*, 195 Va. 326, 78 S.E.2d 893 (1953). Whether an area satisfies the statutory requirements for redevelopment and whether an authority has properly exercised its powers of eminent domain are questions subject to judicial review, although the scope of such review is limited. *Runnels v. Staunton Redev. & Hous. Auth.*, 207 Va. 407, 149 S.E.2d 882 (1966); *Bristol Redev. & Hous. Auth. v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956); *Hunter v. Norfolk Redev. & Hous. Auth.*, 195 Va. 326, 78 S.E.2d 893 (1953); see also *Norfolk Fed’n of Bus. Dists. v. Dep’t of Hous. & Urban Dev.*, 932 F. Supp. 730 (E.D. Va.) (rejecting constitutional and statutory challenges to redevelopment and housing authority’s lease of commercial property to private corporation), *aff’d*, 103 F.3d 119 (4th Cir. 1996).

A property owner who disputes an authority’s finding of blight has the burden of proving by clear and convincing evidence that such findings were arbitrary and unwarranted. *Rudder v. Wise Cnty. Redev. & Hous. Auth.*, 219 Va. 592, 249 S.E.2d 177 (1978) (flooding is an environmental condition that qualifies as blight). Any benefit to an individual from an authority’s acquisition of property in a redevelopment area is deemed unimportant as long as the animating and dominating purpose of the project is for the public good. *City of Charlottesville v. DeHaan*, 228 Va. 578, 323 S.E.2d 131 (1984); *Hunter v. Norfolk Redev. & Hous. Auth.*, 195 Va. 326, 78 S.E.2d 893 (1953).

Whenever federal funds are used in a redevelopment project and a person or business is displaced, such displaced person or business is entitled to compensation from the authority pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. 42 U.S.C. §§ 4601 -4655. The Act does not create an implied right of action for enforcement of its mandated policies. *Clear Sky Car Wash LLC v. City of Chesapeake*, 743 F.3d 438 (4th Cir. 2014); *Bergano v. City of Va. Beach*, No. 2:15cv520 (E.D. Va. Aug. 15, 2016). Compensation is also mandated by state law under the Virginia

Relocation Assistance and Real Property Acquisition Policies Act. Va. Code §§ 25.1-400 - 25.1-421. See *Bergano, D.D.S., P.C. v. City of Va. Beach*, 241 F. Supp. 3d 690 (E.D. Va. 2017) (city violated procedural due process when it deprived the plaintiff of relocation assistance pursuant to Va. Code § 25.1-400 et seq.). The United States Supreme Court has held, however, that a telephone utility forced to relocate from a public right of way is not a displaced person entitled to compensation under the federal legislation. *Norfolk Redev. & Hous. Auth. v. Chesapeake & Potomac Tel. Co.*, 464 U.S. 30, 104 S. Ct. 304 (1983).

In addition, a redevelopment authority is not required to prepare an environmental impact statement before it exercises its power of eminent domain in a redevelopment area. *Rudder v. Wise Cnty. Redev. & Hous. Auth.*, 219 Va. 592, 249 S.E.2d 177 (1978).

3-8.03 Conservation Areas

A conservation area is an area designated by the authority, which is in a state of deterioration and in the early stages of becoming a blighted area. Va. Code § 36-3.

Following the approval of a conservation area by resolution of the governing body of the jurisdiction in which the area is located, the authority is authorized to conserve the area, prevent further deterioration, acquire blighted property, make land and improvements so acquired available to nongovernmental persons or entities, and generally construct or rehabilitate residential housing developments, streets, utilities, parks, parking facilities, and other improvements essential to the plan. Va. Code § 36-49.1.

The conservation plan must indicate (1) the relationship of the plan to specific local objectives; (2) conditions or limitations on the acquisition of property; (3) proposed land uses for the properties to be acquired; (4) any conditions or limitations on rehabilitation or redevelopment by public enterprise or nongovernmental persons or entities; (5) standards of design, construction, maintenance, and use of property and other measures to be taken or recommended toward elimination and prevention of blight; (6) provisions for relocation of persons displaced by the implementation of the plan and the method of providing decent, safe, sanitary, and affordable dwellings substantially equal in number to the substandard dwellings that will be cleared from the area; (7) limitations on the length of time within which such project activities can be undertaken; (8) procedures for administrative review; and (9) procedures for amendment of the plan. Va. Code § 36-51.1. The plan must then be approved by the governing body of the jurisdiction or other agency so empowered to act.

Prior to the adoption of a conservation plan, the authority must send by certified mail to the owner of every parcel of property to be acquired a notification of the proposed acquisition and the owner's right to appear in any condemnation proceeding. At the time it makes its price offer, the authority must provide the owner with a fair market value certificate by a certified appraiser. Va. Code § 36-27.

Once the conservation plan has been adopted, an authority is authorized to exercise powers similar to those it possesses in the redevelopment context, with the important exception of certain limitations on its power to acquire property by eminent domain. Va. Code § 36-50.1. The authority may exercise its power of eminent domain to acquire only (1) properties designated for public use; (2) properties that violate the standards for design, construction, maintenance, and use set forth in the conservation plan and which have not been brought into compliance within one year of the authority's request to the owner to rehabilitate the property; (3) properties that cannot be conveyed to the authority voluntarily because the owners do not have marketable title; or (4) properties that are infeasible of rehabilitation, blighted properties, or properties that inhibit or prevent accomplishment of the purposes of the plan. *Id.* Property in a

conservation area may be made available by an authority to nongovernmental persons or entities for development subject to the same limitations as those placed on redevelopment areas. Va. Code § 36-53. The limitations of Va. Code § 1-219.1 also apply.

3-8.04 Rehabilitation Areas

A rehabilitation area is an area adjacent to an area embraced in a conservation plan, is in the early stages of deterioration, and is determined by the locality as likely to continue to deteriorate and become eligible for designation as a conservation area. Va. Code § 36-52.3. Upon the identification of such an area within a jurisdiction and notice to the property owners in such area, the governing body may adopt an ordinance declaring and designating the area a rehabilitation area. *Id.*

Once a rehabilitation area has been designated, the redevelopment and housing authority may lend money or make grants to property owners in such area for the rehabilitation of their properties. The authority, however, may not acquire property in the area through the exercise of its power of eminent domain. *Id.*

3-8.05 Spot Blight Areas⁵

Authorities and localities also have the authority to address issues of blight without the adoption of a redevelopment or conservation area where spot blight exists. Va. Code § 36-49.1:1. An authority has the power to acquire by eminent domain and to hold, clear, repair, manage, or dispose of blighted property within or outside of a conservation or redevelopment area. Upon notice that a property is considered blighted, an owner has thirty days to propose a plan to cure the blight. If the owner does not respond, the authority may request that the locality declare the property as blighted by ordinance. The authority may carry out the approved plan. *Id.*

Localities are given the exact same powers as above. Additionally, only localities are authorized to recover the costs of repair of such property upon its sale, impose a lien with interest on the property for such costs incurred under an approved plan, or declare such property a nuisance in lieu of acquiring the property by eminent domain or abating the nuisance with an approved plan. *Id.* The nuisance can be abated pursuant to Va. Code § 15.2-900, which applies to all localities and allows a lien to be placed on the property, or § 15.2-1115, which allows a municipality to abate the nuisance if the landowner fails to do so and allows costs to be collected from the property owner or occupant when the property is sold.

Other statutory authority that a locality may use to control blight include: Va. Code §§ 15.2-900 (abate nuisance of release of dangerous substances and dangerous or unsanitary structures, including recovery of emergency response costs); 15.2-901 (weed ordinance, costs, and lien provisions); 15.2-906 (remove, repair, or secure structure that might endanger public health or safety, costs, and lien provisions); 15.2-1115 (broad nuisance abatement authority and costs); 15.2-1127 (registration of vacant building); 15.2-907 (abatement of criminal (drug and other illegal activities) blight, costs, and lien); and 18.2-258 (drug blight nuisance and a requirement for police assistance).

Lastly, the Virginia Removal or Rehabilitation of Derelict Structures Fund provides for matching grants of up to one million dollars to local governments for acquisition, demolition, removal, rehabilitation, or repair of specific derelict structures. Va. Code § 36-155. However, one-half of all funds received must be used in a gubernatorially-designated housing re-vitalization zone, which designation localities may seek for up to two locations.

⁵ See [Chapter 28, Blight and Nuisance](#), for an expanded treatment of this topic.

Va. Code § 36-160(B); *see generally* Housing Revitalization Zone Act, Va. Code § 36-157 et seq.