

Virginia
Building and
Fire Code
Related Laws
Package

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VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT”
Division of Building and Fire Regulation

600 E. Main Street, Suite 300
Richmond, VA 23219

BUILDING AND FIRE CODE RELATED LAWS PACKAGE
(For correlation with the 2012 State Building and Fire Codes)

This package is provided to assist persons that are using or applying Virginia’s building and fire related regulations. The information contained in this package has been compiled from the Code of Virginia and other sources and is intended to be used as a quick, handy reference guide or aid. The excerpts from the Code of Virginia are only current through the 2013 Session of the General Assembly. More recent laws may be viewed at the website of the Virginia Code Commission at the following address: <http://legis.state.va.us/codecomm/codehome.htm>.

Also contained in this package is information about when an architect’s or engineer’s seal is required on construction documents (drawings) required for permits to construct buildings and structures, with regard to group classification, occupancy load and physical size and limiting criteria for design of electrical, plumbing and mechanical systems in such structures. There are contacts and telephone numbers for functional design responsibilities and a list of previous adoptions and amendments of the *Uniform Statewide Building Code* (USBC) with dates and references to effective editions of model codes and standards. There is an index and copies of memorandums of agreement for information on the relationship of other state agencies’ regulations to the Board of Housing and Community Development’s regulations in certain subject areas.

USBC questions: The local building inspection department should be consulted for information and assistance regarding application of the USBC. Additional technical assistance may be obtained by contacting the Department’s Division of Building and Fire Regulation at (804) 371-7150.

Statewide Fire Prevention Code (SFPC) questions: The local fire prevention department should be consulted for information and assistance regarding application of the SFPC. Additional technical assistance may be obtained by also contacting the Regional State Fire Marshal’s office in your area and the State Fire Marshal’s Office at (804) 371-0220

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EXCERPTS FROM THE CODE OF VIRGINIA

TITLE 2.2 – ADMINISTRATION OF GOVERNMENT

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
2. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information, the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any

automated data processing or telecommunications system.

4. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems. The same categories of records of any governmental or nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.
5. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.
6. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility,

building or structure or the safety of persons using such facility, building or structure.

7. Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury.

8. [Expired.]
9. Records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be disclosed.
10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.
11. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

12. Records of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such commission or organizations in connection with their work. In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.
13. Documentation or other information as determined by the State Comptroller that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, the disclosure of which would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.
14. Documentation or other information relating to the Statewide Agencies Radio System (STARS) or any

other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any other similar local or regional public safety communications system; those portions of engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building, or structure or the safety of any person.

15. Records of a salaried or volunteer Fire/EMS company or Fire/EMS department, to the extent that the records disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.
16. Records of hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health, to the extent such records reveal the disaster recovery plans or the evacuation plans for such facilities in the event of fire, explosion, natural disaster, or other catastrophic event. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

TITLE 15.2 – COUNTIES, CITIES AND TOWNS

§ 15.2-900. Abatement or removal of nuisances by localities; recovery of costs.

In addition to the remedy provided by § 48-5 and any other remedy provided by law, any locality may maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents

an imminent and immediate threat to life or property, then the locality may abate, raze, or remove such public nuisance, and a locality may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

The term "nuisance" includes, but is not limited to, dangerous or unhealthy substances which have escaped, spilled, been released or which have been allowed to accumulate in or on any place and all unsafe, dangerous, or unsanitary public or private buildings, walls, or structures which constitute a menace to the health and safety of the occupants thereof or the public. The term "responsible party" includes, but is not limited to, the owner, occupier, or possessor of the premises where the nuisance is located, the owner or agent of the owner of the material which escaped, spilled, or was released and the owner or agent of the owner who was transporting or otherwise responsible for such material and whose acts or negligence caused such public nuisance.

§ 15.2-901. Locality may provide for removal or disposal of trash, cutting of grass and weeds; penalty in certain counties.

A. Any locality may, by ordinance, provide that:

1. The owners of property therein shall, at such time or times as the governing body may prescribe, remove therefrom any and all trash, garbage, refuse, litter and other substances which might endanger the health or safety of other residents of such locality; or may, whenever the governing body deems it necessary, after reasonable notice, have such trash, garbage, refuse, litter and other like substances which might endanger the health of other residents of the locality, removed by its own agents or employees, in which event the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected;
2. Trash, garbage, refuse, litter and other debris shall be disposed of in personally owned or privately owned receptacles that are provided for such use and for the use of the persons disposing of such matter or in authorized facilities provided for such purpose and in no other manner not authorized by law;
3. The owners of vacant developed or undeveloped property therein, including such property upon which buildings or other improvements are located, shall cut the grass, weeds and other foreign growth on such property or any part thereof at such time or times as the governing body shall prescribe; or may, whenever the governing body deems it necessary, after

reasonable notice as determined by the locality, have such grass, weeds or other foreign growth cut by its agents or employees, in which event the cost and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the locality as taxes are collected. For purposes of this provision, one written notice per growing season to the owner of record of the subject property shall be considered reasonable notice. In the Counties of Dinwiddie, James City, and Prince George, the Cities of Colonial Heights, Hampton, Hopewell, Newport News, Williamsburg, and Winchester, and the Towns of Ashland, Cedar Bluff, Chincoteague, and Orange, and in a locality within Planning District 8, an ordinance adopted pursuant to this subdivision may also apply to owners of occupied property therein. No such ordinance adopted by any county shall have any force and effect within the corporate limits of any town. No such ordinance adopted by any county having a density of population of less than 500 per square mile shall have any force or effect except within the boundaries of platted subdivisions or any other areas zoned for residential, business, commercial or industrial use.

- B. Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.
- C. The governing body of any locality may by ordinance provide that violations of this section shall be subject to a civil penalty, not to exceed \$50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period.
- D. Except as provided in this subsection, adoption of an ordinance pursuant to subsection C shall be in lieu of criminal penalties and shall preclude prosecution of

such violation as a misdemeanor. The governing body of any locality may, however, by ordinance provide that such violations shall be a Class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

§ 15.2-902. Authority of locality to control certain noxious weeds.

- A. Any locality may by ordinance prevent, control and abate the growth, importation, spread and contamination of uninfested lands by the species of grass *Sorghum halepense*, commonly known as Johnson grass or by the woody shrub *rosa multiflora*, commonly known as multiflora rose.

The Virginia Department of Agriculture and Consumer Services is authorized to provide financial and technical assistance to, and enter into agreements with, any locality which adopts an ordinance for the control of Johnson grass or multiflora rose.

- B. Any locality may by ordinance control the growth of musk thistle, the weed designated as *Carduus nutans* L., a biennial weed of the Compositae family, or curled thistle, the weed designated as *Carduus acanthoides* L., an annual and biennial weed of the Compositae family. Any such musk thistle or curled thistle growing in the locality may be declared a public nuisance and noxious weed, harmful to plant and grass growth and to pastures, and may be destroyed.

§ 15.2-906. Authority to require removal, repair, etc., of buildings and other structures.

Any locality may, by ordinance, provide that:

1. The owners of property therein, shall at such time or times as the governing body may prescribe, remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of such locality;
2. The locality through its own agents or employees may remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of such locality, if the owner and lienholder of such property, after reasonable notice and a reasonable time to do so, has failed to remove, repair, or secure the building, wall or other structure. For purposes of this section, repair may include maintenance work to the exterior of a building to prevent deterioration of the building or

adjacent buildings. For purposes of this section, reasonable notice includes a written notice (i) mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner and (ii) published once a week for two successive weeks in a newspaper having general circulation in the locality. No action shall be taken by the locality to remove, repair, or secure any building, wall, or other structure for at least 30 days following the later of the return of the receipt or newspaper publication, except that the locality may take action to prevent unauthorized access to the building within seven days of such notice if the structure is deemed to pose a significant threat to public safety and such fact is stated in the notice;

3. In the event the locality, through its own agents or employees, removes, repairs, or secures any building, wall, or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected;
4. Every charge authorized by this section or § 15.2-900 with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed; and
5. Notwithstanding the foregoing, with the written consent of the property owner, a locality may, through its agents or employees, demolish or remove a derelict nonresidential building or structure provided that such building or structure is neither located within or determined to be a contributing property within a state or local historic district nor individually designated in the Virginia Landmarks Register. The property owner's written consent shall identify whether the property is subject to a first lien evidenced by a recorded deed of trust or mortgage and, if so, shall document the property owner's best reasonable efforts to obtain the consent of the first lienholder or the first lienholder's authorized agent. The costs of such demolition or removal shall constitute a lien against such property. In the event the consent of the first lienholder or the first lienholder's authorized agent is obtained, such lien shall rank on a parity with liens for unpaid local taxes and be enforceable in the same manner as provided in subdivision 4. In the event the

consent of the first lienholder or the first lienholder's authorized agent is not obtained, such lien shall be subordinate to that first lien but shall otherwise be subject to subdivision 4; and

6. A locality may prescribe civil penalties, not to exceed a total of \$1,000, for violations of any ordinance adopted pursuant to this section.

§ 15.2-907.1. Authority to require removal, repair, etc., of buildings that are declared to be derelict.

Any locality that has a real estate tax abatement program in accordance with this section may, by ordinance, provide that:

1. The owners of property therein shall at such time or times as the governing body may prescribe submit a plan to demolish or renovate any building that has been declared a "derelict building." For purposes of this section, "derelict building" shall mean a residential or nonresidential building or structure, whether or not construction has been completed, that might endanger the public's health, safety, or welfare and for a continuous period in excess of six months, it has been (i) vacant, (ii) boarded up in accordance with the building code, and (iii) not lawfully connected to electric service from a utility service provider or not lawfully connected to any required water or sewer service from a utility service provider.
2. If a building qualifies as a derelict building pursuant to the ordinance, the locality shall notify the owner of the derelict building that the owner is required to submit to the locality a plan, within 90 days, to demolish or renovate the building to address the items that endanger the public's health, safety, or welfare as listed in a written notification provided by the locality. Such plan may be on a form developed by the locality and shall include a proposed time within which the plan will be commenced and completed. The plan may include one or more adjacent properties of the owner, whether or not all of such properties may have been declared derelict buildings. The plan shall be subject to approval by the locality. The locality shall deliver the written notice to the address listed on the real estate tax assessment records of the locality. Written notice sent by first-class mail, with the locality obtaining a U.S. Postal Service Certificate of Mailing shall constitute delivery pursuant to this section.
3. If a locality delivers written notice and the owner of the derelict building has not submitted a plan to the locality within 90 days as provided in subdivision 2, the locality may exercise such remedies as provided in this section or as otherwise provided by law.

4. The owner of a building may apply to the locality and request that such building be declared a derelict building for purposes of this section.
5. The locality, upon receipt of the plan to demolish or renovate the building, at the owner's request, shall meet with the owner submitting the plan and provide information to the owner on the land use and permitting requirements for demolition or renovation.
6. If the property owner's plan is to demolish the derelict building, the building permit application of such owner shall be expedited. If the owner has completed the demolition within 90 days of the date of the building permit issuance, the locality shall refund any building and demolition permit fees. This section shall not supersede any ordinance adopted pursuant to § 15.2-2306 relative to historic districts.
7. If the property owner's plan is to renovate the derelict building, and no rezoning is required for the owner's intended use of the property, the site plan or subdivision application and the building permit, as applicable, shall be expedited. The site plan or subdivision fees may be refunded, all or in part, but in no event shall the site plan or subdivision fees exceed the lesser of 50 percent of the standard fees established by the ordinance for site plan or subdivision applications for the proposed use of the property, or \$5,000 per property. The building permit fees may be refunded, all or in part, but in no event shall the building permit fees exceed the lesser of 50 percent of the standard fees established by the ordinance for building permit applications for the proposed use of the property, or \$5,000 per property.
8. Prior to commencement of a plan to demolish or renovate the derelict building, at the request of the property owner, the real estate assessor shall make an assessment of the property in its current derelict condition. On the building permit application, the owner shall declare the costs of demolition, or the costs of materials and labor to complete the renovation. At the request of the property owner, after demolition or renovation of the derelict building, the real estate assessor shall reflect the fair market value of the demolition costs or the fair market value of the renovation improvements, and reflect such value in the real estate tax assessment records. The real estate tax on an amount equal to the costs of demolition or an amount equal to the increase in the fair market value of the renovations shall be abated for a period of not less than 15 years, and is transferable with the property. The abatement of taxes for demolition shall not apply if the structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district. However, if the locality has an existing tax abatement program for less

than 15 years, as of July 1, 2009, the locality may provide for a tax abatement period of not less than five years.

9. Notwithstanding the provisions of this section, the locality may proceed to make repairs and secure the building under § 15.2-906, or the locality may proceed to abate or remove a nuisance under § 15.2-900. In addition, the locality may exercise such remedies as may exist under the Uniform Statewide Building Code and may exercise such other remedies available under general and special law.

§ 15.2-921. Ordinances requiring fencing of swimming pools.

For the purposes of this section:

"**Swimming pool**" includes any outdoor man-made structure constructed from material other than natural earth or soil designed or used to hold water for the purpose of providing a swimming or bathing place for any person or any such structure for the purpose of impounding water therein to a depth of more than two feet.

"**Fence**" means a close type vertical barrier not less than four feet in height above ground surface. A woven steel wire, chain link, picket or solid board type fence or a fence of similar construction which will prevent the smallest of children from getting through shall be construed as within this definition.

Any locality may adopt ordinances making it unlawful for any person to construct, maintain, use, possess or control any pool on any property in such locality, without having a fence completely around such swimming pool. Such ordinances also may provide that every gate in such fence shall be capable of being securely fastened at a height of not less than four feet above ground level; that it shall be unlawful for any such gate to be allowed to remain unfastened while the pool is not in use; and that such fence shall be constructed so as to come within two inches of the ground at the bottom and shall be at least five feet from the edge of the pool at any point.

Violation of any such ordinance may be made punishable by a fine of not more than \$300 or confinement in jail for not more than thirty days, either or both. Each day's violation may be construed as a separate offense.

Any such ordinance may be made applicable to swimming pools constructed before, as well as those constructed after, the adoption thereof. No such ordinance shall take effect less than ninety days from the adoption thereof, nor shall any such ordinance apply to any swimming pool operated by or in conjunction with any hotel located on a government reservation.

§ 15.2-922. Smoke detectors in certain buildings.

Any locality, notwithstanding any contrary provision of law, general or special, may by ordinance require that smoke detectors be installed in the following structures or buildings: (i) any building containing one or more dwelling units, (ii) any hotel or motel regularly used or offered for, or intended to be used to provide overnight sleeping accommodations for one or more persons, and (iii) rooming houses regularly used, offered for, or intended to be used to provide overnight sleeping accommodations. Smoke detectors installed pursuant to this section shall be installed in conformance with the provisions of the Uniform Statewide Building Code and any locality with an ordinance shall follow a uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code. The ordinance shall allow the type of smoke detector to be either battery operated or AC powered units. Such ordinance shall require that the owner of any unit which is rented or leased, at the beginning of each tenancy and at least annually thereafter, shall furnish the tenant with a certificate that all required smoke detectors are present, have been inspected, and are in good working order. Except for smoke detectors located in hallways, stairwells, and other public or common areas of multifamily buildings, interim testing, repair, and maintenance of smoke detectors in rented or leased units shall be the responsibility of the tenant; however, the owner shall be obligated to service, repair, or replace any malfunctioning smoke detectors within five days of receipt of written notice from the tenant that such smoke detector is in need of service, repair, or replacement.

§ 15.2-2290. Uniform regulations for manufactured housing.

- A. Localities adopting and enforcing zoning ordinances under the provisions of this article shall provide that, in all agricultural zoning districts or districts having similar classifications regardless of name or designation where agricultural, horticultural, or forest uses such as but not limited to those described in § 58.1-3230 are the dominant use, the placement of manufactured houses that are on a permanent foundation and on individual lots shall be permitted, subject to development standards that are equivalent to those applicable to site-built single family dwellings within the same or equivalent zoning district.
- B. Localities adopting and enforcing zoning regulations under the provisions of this article may, to provide for the general purposes of zoning ordinances, adopt uniform standards, so long as they apply to all residential structures erected within the agricultural zoning district or other districts identified in subsection A of this section incorporating such standards. The standards shall not have the effect of excluding manufactured housing.

- C. Local zoning ordinances adopting provisions consistent with this section shall not relieve lots or parcels from the obligations relating to manufactured housing units imposed by the terms of a restrictive covenant.

§ 15.2-2291. Assisted living facilities and group homes of eight or fewer single-family residence.

- A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.
- B. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any assisted living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

§ 15.2-2295. Aircraft noise attenuation features in buildings and structures within airport noise zones.

Any locality in whose jurisdiction, or adjacent jurisdiction, is located a licensed airport or United States government or military air facility, may enforce building regulations relating to the provision or installation of acoustical treatment measures in residential buildings and structures, or portions thereof, other than farm structures, for which building permits are issued after January 1, 2003, in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Any locality in whose jurisdiction, or adjacent jurisdiction, is located a United States Master Jet Base, a licensed airport or United States government or military air facility, may,

in addition, adopt and enforce building regulations relating to the provision or installation of acoustical treatment measures applicable to buildings and structures, or portions thereof, in Assembly, Business, Educational, Institutional, and Mercantile groups, as defined in the International Building Code.

In establishing the regulations, the locality may adopt one or more noise overlay zones as an amendment to its zoning map and may establish different measures to be provided or installed within each zone, taking into account the severity of the impact of aircraft noise upon buildings and structures within each zone. Any such regulations or amendments to a zoning map shall provide a process for reasonable notice to affected property owners. Any regulations or amendments to a zoning map shall be adopted in accordance with this chapter. A statement shall be placed on all recorded surveys, subdivision plats and all final site plans approved after January 1, 2003, giving notice that a parcel of real property either partially or wholly lies within an airport noise overlay zone. No existing use of property which is affected by the adoption of such regulations or amendments to a zoning map shall be considered a nonconforming use solely because of the regulations or amendments. The provisions of this section shall not affect any local aircraft noise attenuation regulations or ordinances adopted prior to the effective date of this act, and such regulations and ordinances may be amended provided the amendments shall not alter building materials, construction methods, plan submission requirements or inspection practices specified in the Virginia Uniform Statewide Building Code.

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the

board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever, with respect to the building or structure, the square footage of a building or structure is enlarged, or the building or structure is structurally altered as provided in the Uniform Statewide Building Code (§ 36-97 et seq.). Further, a zoning ordinance may provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period in excess of 15 years, a zoning ordinance may provide that the building or structure is nonconforming, but shall not provide that such building or structure is illegal and shall be removed solely due to such nonconformity. Further, a zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code. If the local government has issued a permit, other than a building permit, that authorized construction of an improvement to real property and the improvement was thereafter constructed in accordance with such permit, the ordinance may provide that the improvements are nonconforming, but not illegal.

A zoning ordinance shall permit the owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God to repair, rebuild,

or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in § 15.2-2310. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.) and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance of the locality. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the zoning ordinance shall provide for an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided in this paragraph. For purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under § 18.2-77 or 18.2-80, and obtain vested rights under this section.

Notwithstanding any local ordinance to the contrary, an owner of real property shall be permitted to replace an existing on-site sewage system for any existing building in the same general location on the property even if a new on-site sewage system would not otherwise be permitted in that location, unless access to a public sanitary sewer is available to the property. If access to a sanitary sewer system is available, then the connection to such system shall be required. Any new on-site system shall be installed in compliance with applicable regulations of the Department of Health in effect at the time of the installation.

Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two years. Any locality may, by ordinance, provide that following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the owner of the

property on which the sign is located, if notified by the locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify the property owner, the locality through its own agents or employees may enter the property upon which the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from applying to a court of competent jurisdiction for an order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or other appropriate remedy.

Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

§ 15.2-2313. Proceedings to prevent construction of building in violation of zoning ordinance.

Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

TITLE 19.2 – CRIMINAL PROCEDURE

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for any misdemeanor violation of § 54.1-3904 shall be commenced within two years of the discovery of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense by the building official.

Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a locality shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be commenced before the earlier of (i) five years after the commission of the last act in the course of conduct constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without the Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

TITLE 27 – FIRE PROTECTION

§ 27-30. Appointment of fire marshal.

An officer, who shall be called a "fire marshal," may be appointed for each county, city or town, by the governing body thereof, whenever, in the opinion of such body, the appointment shall be deemed expedient. The term "fire marshal" as used in this chapter may include the local fire official and local arson investigator when appointed pursuant to this section.

§ 27-31. Investigation of fires and explosions.

Such fire marshal shall make an investigation into the origin and cause of every fire and explosion occurring within the limits for which he was appointed, and for any such service he shall receive such compensation as the governing body may allow.

§ 27-32. Summoning witnesses and taking evidence.

In making investigations pursuant to § 27-31, the fire marshal may issue a summons directed to a sheriff or sergeant of any county, city or town commanding the officer to summon witnesses to attend before him at such time and place as he may direct. Any such officer to whom the summons is delivered, shall forthwith execute it, and make return thereof to the fire marshal at the time and place named therein.

Witnesses, on whom the summons before mentioned is served, may be compelled by the fire marshal to attend and give evidence, and shall be liable in like manner as if the summons had been issued by a magistrate in a criminal case. They shall be sworn by the fire marshal before giving evidence, and their evidence shall be reduced to writing by him, or under his direction, and subscribed by them respectively.

§ 27-32.1. Right of entry to investigate cause of fire or explosion.

If in making such an investigation, the fire marshal shall make complaint under oath that there is good cause of suspicion or belief that the burning of or explosion on any land, building or vessel or of any object was caused by any act constituting a crime as defined in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 and that he has been refused admittance to the land, building or vessel or to examine the object in or on which any fire or explosion occurred within fifteen days after the extinguishment of such, any magistrate serving the city or county where the land, building, vessel or object is located may issue a warrant to the sheriff of the county or the sergeant of the city requiring him to enter such land, building or vessel or the premises upon which the object is located in the company of the fire marshal for the purposes of conducting a search for evidence showing that such fire or explosion was caused by any act defined in Article 1 of Chapter 5, of Title 18.2.

§ 27-32.2. Issuance of fire investigation warrant.

If, in undertaking such an investigation, the fire marshal or investigator appointed pursuant to § 27-56 makes an affidavit under oath that the origin or cause of any fire or explosion on any land, building, or vessel, or of any object is undetermined and that he has been refused admittance thereto, or is unable to gain permission to enter such land, building, or vessel, or to examine such object, within 15 days after the extinguishing of such, any magistrate serving the city or county where the land, building, vessel,

or object is located may issue a fire investigation warrant to the fire marshal or investigator appointed pursuant to § 27-56 authorizing him to enter such land, building, vessel, or the premises upon which the object is located for the purpose of determining the origin and source of such fire or explosion. If the fire marshal or investigator appointed pursuant to § 27-56, after gaining access to any land, building, vessel, or other premises pursuant to such a fire investigation warrant, has probable cause to believe that the burning or explosion was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained pursuant to § 27-32.1, or consent to conduct the search has otherwise been given.

§ 27-33. Report of investigation.

The fire marshal shall make report to the governing body by whom he was appointed of any investigation made by him as soon thereafter as practicable, returning therewith the evidence taken by him and submitting such recommendations therein as he may think the public interest demands.

§ 27-34. Duties and powers at fires.

Whenever any fire occurs, it shall be the duty of such fire marshal or his designated representative to be present at the same and advise and act in concert with such officers of police as may be present; and, for preserving order at and during the existence of such fire, and for the protection of property, he shall have concurrent powers with the officers of police, and the chief, director, or other officer in charge, but shall not exercise any authority which will conflict with the powers of any chief, director, or other officer in command of any fire department in the discharge of his special duties as such.

§ 27-34.1. Power of fire marshal or fire chief to take property found at scene of fire or explosion; restitution of such property.

The fire chief, fire marshal or his designated representative is authorized to take and preserve any property found at the scene of a fire or explosion during his presence there while in the act of extinguishing such or found later with the consent of the owner or pursuant to § 27-32.1, which property indicates the fire or explosion was intentionally caused. Any person whose property is so taken and held may petition the circuit court of the county or city in which the property was taken or judge in vacation, for return of the property, and the court may order restitution upon such conditions as are appropriate for preservation of evidence, including the posting of bond.

§ 27-34.2. Power to arrest, to procure and serve warrants and to issue summons; limitation on authority.

In addition to such other duties as may be prescribed by law, the local fire marshal and his assistants appointed pursuant to § 27-36 shall, if authorized by the governing body of the county, city or town appointing the local fire marshal, have the authority to arrest, to procure and serve warrants of arrest and to issue summons in the manner authorized by general law for violation of fire prevention and fire safety laws and related ordinances. The authority granted in this section shall not be exercised by any local fire marshal or assistant until such person has satisfactorily completed a training course designed specifically for local fire marshals and their assistants, which course shall be approved by the Virginia Fire Services Board.

The Department of Fire Programs in cooperation with the Department of Criminal Justice Services shall have the authority to design, establish and maintain the required courses of instruction through such agencies and institutions as the Departments jointly may deem appropriate and to approve such other courses as such Departments determine appropriate.

The authority granted in this section shall not be construed to authorize a fire marshal or his assistants to wear or carry firearms.

§ 27-34.2:1. Police powers of fire marshals.

In addition to such other duties as may be prescribed by law, the local fire marshal and those assistants appointed pursuant to § 27-36 designated by the fire marshal shall, if authorized by the governing body of the county, city or town appointing the local fire marshal, have the same police powers as a sheriff, police officer or law-enforcement officer. The investigation and prosecution of all offenses involving hazardous materials, fires, fire bombings, bombings, attempts or threats to commit such offenses, false alarms relating to such offenses, possession and manufacture of explosive devices, substances and fire bombs shall be the responsibility of the fire marshal or his designee, if authorized by the governing body of the county, city or town appointing the local fire marshal. The police powers granted in this section shall not be exercised by any local fire marshal or assistant until such person has satisfactorily completed a course for fire marshals with police powers, designed by the Department of Fire Programs in cooperation with the Department of Criminal Justice Services, which course shall be approved by the Virginia Fire Services Board.

In addition, fire marshals with police powers shall continue to exercise those powers only upon satisfactory participation in in-service and advanced courses and programs designed by the Department of Fire Programs in cooperation with the Department of Criminal Justice Services, which courses shall be approved by the Virginia Fire Services Board.

§ 27-34.3. Power to order immediate compliance with law, etc., or prohibit use of building or equipment.

The local fire marshal shall, if authorized by the governing body of the county, city or town appointing him, have the authority to exercise the powers authorized by the *Fire Prevention Code*. However, an order prohibiting the use of a building or equipment issued pursuant to this section shall not be effective beyond the date of a determination made by the authorities identified in and pursuant to § 27-97, regardless of whether or not said determination overrules, modifies or affirms the order of the local fire marshal. If an order of the local fire marshal issued pursuant to this section conflicts to any degree with an order previously issued by an authority identified in and pursuant to § 27-97, the latter order shall prevail. The local fire marshal shall immediately report to the authorities identified in § 27-97 on the issuance and content of any order issued pursuant to this section.

§ 27-34.4. Inspection and review of plans of buildings under construction.

Inspection of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the *Uniform Statewide Building Code* shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection shall pass to the local fire marshal or official designated by the locality to enforce the *Statewide Fire Prevention Code* (§ 27-94 et seq.) in those localities which enforce the *Statewide Fire Prevention Code*.

§ 27-35. Penalty for failure to discharge duty.

For his failure to discharge any duty required of him by law the fire marshal shall be liable for each offense to a fine not exceeding \$100, to be imposed by the governing body and to be collected as other fines are collected.

§ 27-36. Appointment, powers and duties of assistant fire marshals.

The governing body of any county, city or town, or its designee may appoint one or more assistants, who, in the absence of the fire marshal, shall have the powers and perform the duties of the fire marshal.

§ 27-37. Oath of fire marshal and assistants.

The fire marshal and his assistants, before entering upon their duties, shall respectively take an oath, before any officer authorized to administer oaths, faithfully to discharge the duties of such office; the certificate of the oath shall be returned to and preserved by such governing body.

§ 27-37.1. Right of entry to investigate releases of hazardous material, hazardous waste, or regulated substances.

The fire marshal shall have the right, if authorized by the governing body of the county, city, or town appointing the fire marshal, to enter upon any property from which a release of any hazardous material, hazardous waste, or regulated substance, as defined in § 10.1-1400 or 62.1-44.34:8, has occurred or is reasonably suspected to have occurred and which has entered into the ground water, surface water or soils of the county, city or town in order to investigate the extent and cause of any such release. If, in undertaking such an investigation, the fire marshal makes an affidavit under oath that the origin or cause of any such release is undetermined and that he has been refused admittance to the property, or is unable to gain permission to enter the property, any magistrate serving the city or county where the property is located may issue an investigation warrant to the fire marshal authorizing him to enter such property for the purpose of determining the origin and source of the release. If the fire marshal, after gaining access to any property pursuant to such investigation warrant, has probable cause to believe that the release was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained or consent to conduct the search has otherwise been given.

§ 27-94. Short title.

This chapter may be cited as the "Virginia Statewide Fire Prevention Code Act."

§ 27-95. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them:

"Board" means the Board of Housing and Community Development.

"Code provisions" means the provisions of the *Fire Prevention Code* as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated from time to time by such Board.

"Enforcement agency" means the agency or agencies of any local governing body or the State Fire Marshal charged with the administration or enforcement of the *Fire Prevention Code*.

"Fire Prevention Code" or "Code" means the *Statewide Fire Prevention Code*.

"Fire prevention regulation" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof to safeguard life and

property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions or other agencies.

"Fire Services Board" means the Virginia Fire Services Board as provided for in § 9.1-202.

"Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known as fireworks, and which explodes, rises into the air or travels laterally, or fires projectiles into the air.

"Fireworks operator" or "pyrotechnician" means any person engaged in the design, setup, and firing of any fireworks other than permissible fireworks either inside a building or structure or outdoors.

"Inspection warrant" means an order in writing, made in the name of the Commonwealth, signed by any judge or magistrate whose territorial jurisdiction encompasses the building, structure or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, examination, testing or collection of samples for testing required or authorized by the *Virginia Statewide Fire Prevention Code*.

"Local government" means the governing body of any city, county or town in this Commonwealth.

"Permissible fireworks" means any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

"Permissible fireworks" means any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

"State Fire Marshal" means the State Fire Marshal as provided for by § 36-139.2.

§ 27-96. Statewide standards.

The purposes of this chapter are to provide for statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling, and use of substances, materials and devices, including fireworks, explosives and blasting agents, wherever located.

§ 27-96.1. Chapter inapplicable to certain uses of fireworks.

Unless prohibited by a local ordinance, the provisions of this chapter pertaining to fireworks shall not apply to the sale of or to any person using, igniting or exploding permissible fireworks on private property with the consent of the owner of such property.

§ 27-96.2. Exemptions generally.

The provisions of this chapter concerning fireworks shall have no application to any officer or member of the armed forces of this Commonwealth, or of the United States, while acting within the scope of his authority and duties as such, nor to any offer of sale or sale of fireworks to any authorized agent of such armed forces; nor shall it be applicable to the sale or use of materials or equipment, otherwise prohibited by this chapter, when such materials or equipment is used or to be used by any person for signaling or other emergency use in the operation of any boat, railroad train or other vehicle for the transportation of persons or property.

§ 27-97. Adoption of Fire Prevention Code.

The Board of Housing and Community Development is hereby empowered to adopt and promulgate a *Statewide Fire Prevention Code* which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two Boards. The Fire Prevention Code shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of fireworks or explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within the Commonwealth in accordance with regulations adopted by the Board. In addition to conducting criminal background checks pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of such regulations, the enforcing agency may issue annual permits for such activities to any state regulated public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1.

The Fire Prevention Code shall prohibit any person, firm, or corporation from transporting, manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market and distribute fireworks for the sole purpose

of fireworks displays permitted by an enforcement agency or by any locality.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local governments or other political subdivisions. Local governments are hereby empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the Code. The Fire Prevention Code shall prohibit any person not certified by the State Fire Marshal's Office as a fireworks operator or pyrotechnician to design, set up, or conduct or supervise the design, setup, or conducting of any fireworks display, either inside a building or structure or outdoors and shall require that at least one person holding a valid certification is present at the site where the fireworks display is being conducted. Certification shall not be required for the design, storage, sale, use, conduct, transportation, and set up of permissible fireworks or the supervision thereof or in connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations including, but not limited to, standards of the International Code Council, the National Fire Protection Association, and recognized organizations issuing standards for the protection of the public from the hazards of explosives and blasting agents. Such standards shall be based on the companion document to the model building code referenced by the Uniform Statewide Building Code.

The Fire Prevention Code shall require that buildings constructed prior to 1973 be maintained in accordance with state fire and public building regulations in effect prior to March 31, 1986, and that any building which is (i) more than 75 feet or more than six stories high and (ii) used, in whole or in part, as a dormitory to house students by any public or private institution of higher education shall be required to comply with the provisions of § 36-99.3. The Fire Prevention Code shall also require annual fire drills in all buildings having floors used for human occupancy located more than 75 feet above the lowest level of fire department vehicle access. The drills shall be conducted by building staff personnel or the owner of the building in accordance with a plan approved by the appropriate fire official and shall not affect other current occupants. The Board may modify, amend or repeal any Code provisions as the public interest requires. Any such Code changes shall be developed in cooperation with the

Fire Services Board pursuant to procedures agreed to by the two Boards.

§ 27-97.1. Reports of stolen explosives.

Any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with the provisions of the Code shall report to the office of the chief arson investigator for the Commonwealth as well as the chief local law-enforcement official any theft or other unauthorized taking or disappearance of any explosives or blasting devices from their inventory. An initial verbal report shall be made within three days of the discovery of the taking or disappearance. A subsequent written report shall be filed within such time, and in such form, as is specified by the chief arson investigator.

Failure to comply with the provisions of this section shall constitute a Class 1 misdemeanor punishable by the same penalties applicable to violations of the Fire Prevention Code.

§ 27-97.2. Issuance of permit; background investigations.

A. The State Fire Marshal or other issuing authority shall consider all permit applications for manufacturing, storage, handling, use or sales of explosives and applications for certification as a blaster or as a fireworks operator or pyrotechnician, and may grant a valid permit or certification to applicants who meet the criteria established in the Statewide Fire Prevention Code. The State Fire Marshal shall require a background investigation, to include a national criminal history record information check, of all individual applicants and all designated persons representing an applicant that is not an individual, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster or as a fireworks operator or pyrotechnician. Each such applicant shall submit his fingerprints to the State Fire Marshal on a form provided by the State Fire Marshal and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. Any firm or company manufacturing, storing, using, or selling explosives shall provide to the enforcement agency, the State Fire Marshal or other issuing authority the name of a representative responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits. The State Fire Marshal or other issuing authority shall deny any application for a permit or for certification as a blaster or as a fireworks operator or pyrotechnician if the applicant or designated person representing an applicant has been convicted of any

felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority. The provisions of this section shall not apply to the manufacturing, storage, handling, use or sales of permissible fireworks or in connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

B. No permit under this section shall be required of any person holding a certification or permit issued pursuant to the provisions of Title 45.1.

§ 27-98. Enforcement of Fire Prevention Code; appeals from decisions of local enforcing agencies; inspection of buildings.

Any local government may enforce the Fire Prevention Code in its entirety or with respect only to those provisions of the Fire Prevention Code relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the Fire Prevention Code relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the Code. The State Fire Marshal shall also have authority to enforce the Code in those jurisdictions in which the local governments do not enforce the Code and may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code in such jurisdictions. In addition, subject to the approval of the Board of Housing and Community Development, the State Fire Marshal may charge a fee to recover the actual cost of administering and enforcing the Code in jurisdictions for which he serves as the enforcement authority. No fee may be charged for the inspection of any school. The local governing body of any jurisdiction that enforces the Code may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code. Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board. Appeals from the application of the Code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board as provided in Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals; however, for the City of Chesapeake no fee charged for the inspection of any place of religious worship designated as Assembly Group A-3 under the Fire Prevention Code shall exceed \$50. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not

include overtime costs, unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the fire official for the locality. Any local fire code may provide for an appeal to a local board of appeals. If no local board of appeals exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.

§ 27-98.1. Inspections of buildings, structures, properties and premises.

In order to carry out the purposes of the Code and any regulations or standards adopted in pursuance thereof, the local fire official, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized, with the consent of the owner, operator, or agent in charge to enter a building, structure, property or premises for the purpose of conducting an inspection, examination, testing, or collection of samples for testing, during regular working hours and at other reasonable times, and in a reasonable manner, to determine if the building, structures, systems, machines, apparatus, devices, equipment, and materials stored, used or handled, and all pertinent conditions therein, are in compliance with the requirements, regulations or standards set forth in the Code.

§ 27-98.2. Issuance of warrant.

Search warrants for inspections or reinspection of buildings, structures, property, or premises subject to inspections pursuant to the Code, to determine compliance with regulations or standards set forth in the Code, shall be based upon a demonstration of probable cause and supported by affidavit. Such inspection warrants may be issued by any judge or magistrate having authority to issue criminal warrants whose territorial jurisdiction encompasses the building, structure, property or premises to be inspected or entered, if he is satisfied from the affidavit that there is probable cause for the issuance of an inspection warrant. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, thing or property to be inspected, examined or tested and the purpose for which the inspection, examination, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if such inspection, examination, testing or collection of samples for testing are necessary to ensure compliance with the Fire Prevention Code for the protection of life and property from the hazards of fire or explosion. The supporting affidavit shall contain either a statement that consent to inspect, examine,

test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the fire safety laws, regulations or standards of the Commonwealth which authorize such inspection, examination, testing or collection of samples for testing. In the case of an inspection warrant based upon legislative or administrative standards for selecting buildings, structures, property or premises for inspections, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge or magistrate that the inspection program is based on reasonable standards and that the standards are being applied to a particular place in a neutral and fair manner. The issuing judge or magistrate may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

§ 27-98.3. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period of not more than seven days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The judicial officer may extend or renew the inspection warrant upon application for extension or renewal setting forth the results which have been obtained or a reasonable explanation of the failure to obtain such results. The extension or renewal period of the warrant shall not exceed seven days. The warrant shall be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. The return shall list any samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

§ 27-98.4. Conduct of inspections, examinations, testing, or collection of samples.

No warrant shall be executed in the absence of the owner, operator or agent in charge of the particular building, structure, property or premises unless specifically authorized by the issuing judicial officer upon showing that such authority is reasonably necessary to effect the purposes of a statute or regulation being enforced. An entry pursuant to this warrant shall not be made forcibly, except that the issuing officer may expressly authorize a forcible entry (i) where facts are shown sufficient to create a reasonable suspicion of an immediate threat to an occupant of the particular building, structure, property, or premises, or, to the general safety and welfare of the public, or, to adjacent buildings, structures, properties or premises, or (ii) where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the fire official and to a law-enforcement officer who shall accompany the fire official during the execution.

§ 27-98.5. Review by courts.

- A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the issuing judge or magistrate except as a defense in a contempt proceeding, unless the owner or custodian of the building, structure, property or premises to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the inspection warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera view as the court may deem appropriate.
- B. After the warrant has been executed and returned to the issuing judge, the validity of the warrant may be reviewed either as a defense to any citation issued by the fire official or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the owner, operator, or agent in charge of whose building, structure, property or premises has been inspected makes a substantial showing by affidavit accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The review shall only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

§ 27-99. (Effective until July 1, 2008) State buildings.

The Fire Prevention Code shall be applicable to all state-owned buildings and structures. Every agency, commission or institution, including all institutions of higher education, of the Commonwealth shall permit, at all reasonable hours, a local fire official reasonable access to existing structures or a structure under construction or renovation, for the purposes of performing an informational and advisory fire safety inspection. The local fire official may submit, subsequent to performing such inspection, his findings and recommendations including a list of corrective actions necessary to ensure that such structure is reasonably safe from the hazards of fire to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within 60 days of receipt of such findings and recommendations, the State Fire Marshal and the local fire official of the corrective measures taken to eliminate the hazards reported by the local fire official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § 27-98.

The State Fire Marshal may enter into an agreement as is provided for in § 9.1-207 with any local enforcement agency that enforces the Fire Prevention Code to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door, improper storage of flammable liquids, use of decorative materials and overcrowding.

§ 27-100. Violation a misdemeanor.

It shall be unlawful for any owner or any other person, firm, or corporation, on or after the effective date of any Code provisions, to violate any provisions of the Fire Prevention Code. Any such violation shall be deemed a Class 1 misdemeanor, and any owner, or any other person, firm, or corporation convicted of such violation shall be punished in accordance with the provisions of § 18.2-11.

§ 27-100.1. Seizure and destruction of certain fireworks.

Any law-enforcement officer arresting any person for a violation of this chapter related to fireworks shall seize any article of fireworks in the possession or under the control of the person so arrested and shall hold the same until final disposition of any criminal proceedings against such person. If a judgment of conviction be entered against such person, the court shall order destruction of such articles upon expiration of the time allowed for appeal of such judgment of conviction.

§ 27-101. Injunction upon application.

Every court having jurisdiction under existing or any future law is empowered to and shall, upon the application of the local enforcing agency or State Fire Marshal, issue either a mandatory or restraining injunction in aid of the enforcement of, or in prevention of the violation of, any of the provisions of this law or any valid rule or regulation made in pursuance thereof. The procedure for obtaining any such injunction shall be in accordance with the laws then current governing injunctions generally except that the enforcing agency shall not be required to give bond as a condition precedent to obtaining an injunction.

TITLE 32.1 – HEALTH

§ 32.1-165. Prior approval required before issuance of building permit.

No county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building, or upon finding

that the issuance of said permit has been approved by the Review Board.

TITLE 36 – HOUSING

§ 36-70. Short title.

The short title of the law embraced in this chapter is the Virginia Industrialized Building Safety Law.

§ 36-71.1. Definitions.

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Board" means the Board of Housing and Community Development.

"Compliance assurance agency" means an architect or professional engineer registered in Virginia, or an organization, determined by the Department to be specially qualified by reason of facilities, personnel, experience and demonstrated reliability, to investigate, test and evaluate industrialized buildings; to list such buildings complying with standards at least equal to those promulgated by the Board; to provide adequate follow-up services at the point of manufacture to ensure that production units are in full compliance; and to provide a label as evidence of compliance on each manufactured section or module.

"Department" means the Department of Housing and Community Development.

"Industrialized building" means a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in § 36-85.3 and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act shall not be considered industrialized buildings for the purpose of this law.

"Registered" means that an industrialized building displays a registration seal issued by the Department of Housing and Community Development.

"The law" or "this law" means the Virginia Industrialized Building Safety Law as provided in this chapter.

§ 36-73. Authority of Board to promulgate rules and regulations.

The Board shall from time to time promulgate rules and regulations prescribing standards to be complied with in industrialized buildings for protection against the hazards thereof to safety of life, health and property and prescribing procedures for the administration, enforcement and maintenance of such rules and regulations. The standards shall be reasonable and appropriate to the objectives of this law and within the guiding principles prescribed by the General Assembly in this law and in any other law in pari materia. The standards shall not be applied to manufactured homes defined in § 36-85.3.

In making rules and regulations, the Board shall have due regard for generally accepted safety standards as recommended by nationally recognized organizations, including but not limited to the International Code Council and the National Fire Protection Association.

Where practical, the rules and regulations shall be stated in terms of required levels of performance, so as to facilitate the prompt acceptance of new building materials and methods. Where generally recognized standards of performance are not available, the rules and regulations of the Board shall provide for acceptance of materials and methods whose performance has been found by the Department, on the basis of reliable test and evaluation data presented by the proponent, to be substantially equal in safety to those specified.

§ 36-74. Notice and hearing on rules and regulations.

The Board shall comply with all applicable requirements of the Administrative Process Act (§ 2.2-4000 et seq.) when adopting, amending or repealing any rules or regulations under this law.

§ 36-75. Amendment, etc., and annual review of rules and regulations.

The Board may modify, amend or repeal any rules or regulations as the public interest requires.

The Administrator shall make an annual review of the rules and regulations, considering the housing needs and supply in the Commonwealth and factors that tend to impede or might improve the availability of housing for all citizens of the Commonwealth and shall recommend to the Board such modifications, amendments or repeal as deemed necessary.

§ 36-76. Printing and distribution of rules and regulations.

The Administrator shall have printed from time to time, and keep in pamphlet form, all rules and regulations prescribing standards for industrialized buildings. Such pamphlets shall be furnished upon request to members of the public.

§ 36-77. Rules and regulations to be kept in office of Administrator.

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Administrator, accessible to the public.

§ 36-78. Effective date and application of rules and regulations.

No rules or regulations shall be made effective earlier than twelve months after June 26, 1970. No person, firm or corporation shall offer for sale or rental or sell or rent any industrialized buildings which have been constructed after the effective date of such rule or regulation unless it conforms with said rules and regulations. Any industrialized building constructed before the effective date of these regulations shall remain subject to the ordinances, laws or regulations in effect at the time such industrialized building was constructed, but nothing in this chapter shall prevent the enactment or adoption of additional requirements where necessary to provide for adequate safety of life, health and property.

§ 36-79. Effect of label of compliance assurance agency.

Any industrialized building shall be deemed to comply with the standards of the Board when bearing the label of a compliance assurance agency.

§ 36-80. Modifications to rules and regulations.

The Administrator shall have the power upon appeal in specific cases to authorize modifications to the rules and regulations to permit certain specified alternatives where the objectives of this law can be fulfilled by such other means.

§ 36-81. Application of local ordinances; enforcement of chapter by local authorities.

Registered industrialized buildings shall be acceptable in all localities as meeting the requirements of this law, which shall supersede the building codes and regulations of the counties, municipalities and state agencies. The local building official is authorized to and shall determine that any unregistered industrialized building shall comply with the provisions of this law. Local requirements affecting industrialized buildings, including zoning, utility connections, preparation of the site, and maintenance of the unit, shall remain in full force and effect. All local building officials are authorized to and shall enforce the provisions of this law, and the rules and regulations made in pursuance thereof.

§ 36-82. Right of entry and examination by Administrator; notice of violation.

The Administrator shall have the right, at all reasonable hours, to enter into any industrialized building upon permission of any person who has authority or shares the use, access and control over the building, or upon request of local officials having jurisdiction, for examination as to compliance with the rules and regulations of the Board. Whenever the Administrator shall find any violation of the rules and regulations of the Board, he shall order the person responsible therefore to bring the building into compliance, within a reasonable time, to be fixed in the order.

§ 36-82.1. Appeals.

Any person aggrieved by the Department's application of the rules and regulations of the Industrialized Building Safety Law shall be heard by the State Building Code Technical Review Board established by § 36-108. The Technical Review Board shall have the power and duty to render its decision in any such appeal, which decision shall be final if no further appeal is made.

§ 36-83. Violation a Class 1 misdemeanor; penalty.

It shall be unlawful for any person, firm or corporation, on or after June 26, 1970, to violate any provisions of this law or the rules and regulations made pursuant hereto. Any person, firm or corporation violating any of the provisions of this law, or the rules and regulations made hereunder, shall be deemed guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.

§ 36-84. Clerical assistants to Administrator; equipment, supplies and quarters.

The Administrator may employ such permanent or temporary, clerical, technical and other assistants as is found necessary or advisable for the proper administration of this law, and may fix their compensation and may likewise purchase equipment and supplies deemed necessary.

§ 36-85. Fee for registration seal; use of proceeds.

The Board, by rule and regulation, shall establish a fee for each approved registration seal. The proceeds from the sale of such seals shall be used to pay the costs incurred by the Department in the administration of this law.

§ 36-85.1. Refund of fee paid for registration seal.

Any person or corporation having paid the fee for an approved registration seal which it will not use may, unless and except as otherwise specifically provided, within one year from the date of the payment of any such fee, apply to the Administrator for a refund, in whole or in part, of the fee paid; provided that no payment shall be recovered unless the approved registration seal is returned, unused

and in good condition, to the Administrator. Such application shall be by notarized letter.

§ 36-85.2. Short title.

The short title of the law embraced in this chapter is the Virginia Manufactured Housing Construction and Safety Standards Law.

§ 36-85.3. Definitions.

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Any person" shall, in addition to referring to a natural person, include any partnership, corporation, joint stock company or any association whether incorporated or unincorporated.

"Board" means the Board of Housing and Community Development.

"Dealer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use for which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Department" means the Department of Housing and Community Development.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"Federal Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 U.S.C. § 5401 et seq.).

"Federal Regulations" means the Federal Manufactured Home Procedural and Enforcement Regulations.

"Federal Standards" means the Federal Manufactured Home Construction and Safety Standards.

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent risk of death or severe personal injury.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and forty body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

"Manufactured home construction" means all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety.

"Manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against unreasonable risk of the occurrence of accidents due to the design or construction of the home, or any unreasonable risk of death or injury to the user if such accidents do occur.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Secretary" means the Secretary of the United States Department of Housing and Urban Development.

"Skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

"State Administrative Agency" or "SAA" means the Department of Housing and Community Development which is responsible for the administration and enforcement of this law throughout Virginia and of the plan authorized by § 36-85.5.

"The law" or "this law" means the Virginia Manufactured Housing Construction and Safety Standards Law as embraced in this chapter.

§ 36-85.5. Enforcement.

The Department of Housing and Community Development is designated as the agency of this State Administrative Agency plan approved by HUD. The Administrator is authorized to perform the following functions:

1. Enforce the Federal Standards with respect to all manufactured homes manufactured in Virginia;

2. Assure that no state or local standard conflicts with those Federal Standards governing manufactured housing construction and performance.
3. Enter and inspect factories, warehouses, or establishments in which manufactured homes are manufactured, stored, or offered for sale as may be required;
4. Seek enforcement of the civil and criminal penalties established by § 36-85.12 of this law;
5. Carry out the notification and correction procedures specified in the Federal Regulations, including holding such hearings and making such determinations as may be necessary and requiring manufacturers in the Commonwealth to provide such notifications and corrections as may be required by the Federal Regulations;
6. Employ such qualified personnel as may be necessary to carry out the approved plan for enforcement and otherwise administer this law;
7. Require manufacturers, distributors, and dealers in the Commonwealth to make reports to the Secretary in the same manner and to the same extent as if such plan were not in effect;
8. Participate, advise, assist, and cooperate with other state, federal, public, and private agencies in carrying out the approved plan for enforcement;
9. Provide for participation by the SAA in any interstate monitoring activities which may be carried out on behalf of HUD;
10. Receive consumer complaints and take such actions on the complaints as may be required by the Federal Regulations;
11. Give satisfactory assurance to HUD that the SAA has and will have the legal authority necessary for enforcement of the Federal Standards;
12. Take such other actions as may be necessary to comply with Federal Regulations and Standards referenced in this law.

§ 36-85.6. Federal Standards and Regulations.

The Federal Standards shall be the sole standard applicable regarding design, construction, or safety of any manufactured home as defined by this law. The Administrator shall accept manufactured home plan approvals from state or private agencies authorized by HUD to conduct plan reviews and approvals. The Administrator shall accept certifications of compliance

with the Federal Standards for homes manufactured in other states when such certifications are made according to Federal Regulations.

§ 36-85.7. Authority of Board to adopt rules and regulations.

The Board shall from time to time adopt, amend, or repeal such rules and regulations as are necessary to implement this law in compliance with the Federal Act and the Federal Standards and Regulations enacted by HUD.

§ 36-85.8. Notice and hearing on rules and regulations.

The Board shall comply with all applicable requirements of the Administrative Process Act (§ 2.2-4000 et seq.) when adopting, amending, or repealing any rules and regulations under this law.

§ 36-85.9. Printing and distribution of rules and regulations.

The Administrator shall have printed and keep in pamphlet form all rules and regulations prescribing the implementation and enforcement of this law. Such pamphlets shall be furnished to members of the public upon request.

§ 36-85.10. Rules and regulations to be kept in office of Department.

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Department, accessible to the public.

§ 36-85.11. Application of local ordinances; enforcement of chapter by local authorities.

Manufactured homes displaying the certification label as prescribed by the Federal Standards shall be accepted in all localities as meeting the requirements of this law, which shall supersede the building codes of the counties, municipalities and state agencies. Local zoning ordinances and other land use controls that do not affect the manner of construction or installation of manufactured homes shall remain in full force and effect. Site preparation, utility connections, skirting installation, and maintenance of the manufactured home shall meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.).

Notwithstanding the above, structures meeting the definition of "manufactured home" set forth in § 36-85.3 shall be defined in local zoning ordinances as "manufactured homes." The term "manufactured home" shall be defined in local zoning ordinances solely as it is defined in § 36-85.3.

All local building officials are authorized to and shall enforce the regulations adopted by the Board in accordance with this law.

§ 36-85.12. Violation; civil and criminal penalties.

It shall be unlawful for any person, firm or corporation, to violate any provisions of this law, the rules and regulations enacted under authority of this law, or the Federal Law and Regulations. Any person, firm or corporation violating any provision of said laws, rules and regulations, or any final order issued thereunder, shall be liable for civil penalty not to exceed \$1,000 for each violation. Each violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or to perform an act required by the legislation or regulations. The maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

An individual or a director, officer, or agent of a corporation who knowingly and willfully violates Section 610 of the National Manufactured Housing Construction and Safety Standards Act in a manner which threatens the health or safety of any purchaser shall be deemed guilty of a Class 1 misdemeanor and upon conviction fined not more than \$1,000 or imprisoned not more than one year, or both.

§ 36-85.13. Staff, equipment or supplies.

The Administrator may employ permanent or temporary technical, clerical and other assistants as is necessary or advisable for the proper administration of this law. The Administrator may purchase equipment and supplies deemed necessary for the staff.

§ 36-85.14. Fees.

The Board may establish inspection fees to be paid by manufacturers to cover the costs of monitoring inspections. Such fees shall be in the amount and manner as set out in the Federal Regulations. The SAA shall participate in the fee distribution program established by HUD and is authorized to enter into and execute a Cooperative Agreement with HUD for such participation.

§ 36-85.15. Validity.

If any part or provision of this law, or the application to any person or circumstance, is held to be illegal or invalid, the validity of the remainder of this law, or the application to other persons or circumstances, shall not be affected by such ruling.

§ 36-85.16. Definitions.

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under this chapter.

"Code" means the appropriate standards of the *Virginia Uniform Statewide Building Code* and the *Industrialized Building and Manufactured Home Safety Regulations* adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for manufactured homes.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or **"recovery fund"** means the Virginia Manufactured Housing Transaction Recovery Fund.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode, is 8 feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Manufactured home broker" or **"broker"** means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or **"dealer"** means any person, resident or nonresident, engaged in the business of

buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home manufacturer" or **"manufacturer"** means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or **"salesperson"** means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer, broker or manufacturer to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange, or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home that (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer within two years of the date of manufacture, the home is still considered new and must continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by this chapter to be licensed by the Board.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting,

anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Substantial identity of interest" means (i) a controlling financial interest by the individual or corporate principals of the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed or (ii) substantially identical principals or officers as the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the Board.

"Supplier" means the original producer of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

§ 36-85.17. Manufactured Housing Board created; membership.

- A. There is hereby created the Virginia Manufactured Housing Board within the Department of Housing and Community Development. The Board shall be composed of nine members appointed by the Governor subject to confirmation by the General Assembly. The members shall include two manufactured home manufacturers, two manufactured home dealers, the Director, and four members representing the public who have knowledge of the industry.
- B. The Board shall elect from its members a chairman and a vice-chairman for terms of two years. The members of the Board shall initially be appointed for four-year terms. Upon expiration of the initial terms, one manufacturer, one dealer and two members representing the public shall be appointed for two-year terms while one manufacturer, one dealer and two members representing the public shall be appointed for four-year terms. All appointments thereafter shall be for four-year terms. In the event of any vacancy, the Governor shall appoint a replacement to serve the unexpired term. Meetings shall be held at the call of the chairman or whenever two members so request.
- C. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

§ 36-85.18. Powers and duties of Manufactured Housing Board.

The Virginia Manufactured Housing Board shall have the following powers and duties:

1. To issue licenses to manufacturers, dealers, brokers, and salespersons;
2. To require that an adequate recovery fund be established for all regulants;
3. To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry;
4. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as are necessary to carry out the provisions of this chapter, including but not limited to the licensure of manufactured home brokers, dealers, manufacturers, and salespersons and the relicensure of manufactured home brokers, dealers, manufacturers, or salespersons after license revocation or nonrenewal;
5. To make case decisions in accordance with the Administrative Process Act as are necessary to carry out the provisions of this chapter; and
6. To levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual per dealer basis, or a combination thereof.

§ 36-85.19. License required; penalty.

- A. It shall be unlawful and constitute the commission of a Class 1 misdemeanor for any manufactured home manufacturer, dealer, broker, or salesperson to be engaged in business as such in this Commonwealth without first obtaining a license from the Board, as provided in this chapter.

Application for such license shall be made to the Board at such time, in such form, and contain such information as the Board shall require, and shall be accompanied by required fees established by the Board by regulation in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Board shall levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual per dealer basis, or a combination thereof.

In such application, the Board shall require information relating to the matters set forth in § 36-85.20 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All such information shall be considered by the Board in determining the fitness of the applicant to engage in the business for which the license is sought.

All licenses that are granted shall expire, unless revoked or suspended, on the annual anniversary of the date of issuance.

Every regulant under this chapter shall obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee. Upon failure to renew, the license shall automatically expire. Such license may be renewed upon payment of the prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, broker, or salesperson after expiration of the license and is otherwise eligible for a license under the provisions of this chapter.

Special licenses, not to exceed ten days in duration, may be issued for each temporary place of business, operated or proposed by the regulant, that is not contiguous to other premises for which a license is issued. The fee for a special license shall be established by the Board, provided that no such license shall be required for a place of business operated by a regulant that is used exclusively for storage.

- B. Notwithstanding any other provisions of this chapter, the Board may provide by regulation that a manufactured home salesperson will be allowed to engage in business during the time period after applying for a license but before such license is granted.

§ 36-85.20. Grounds for denying, suspending or revoking license.

- A. A license may be denied, suspended, or revoked by the Board on any one or more of the following grounds:
 1. Material misstatement in application for license;
 2. Failure to pay required assessment to the Manufactured Housing Recovery Fund;
 3. Engaging in the business of a manufactured home manufacturer, dealer, broker, or salesperson without first obtaining a license from the Board;

4. Failure to comply with the warranty service obligations and claims procedure established by this chapter;
 5. Failure to comply with the set-up and tie-down requirements of the Code;
 6. Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into the regulant's possession arising from the sale of manufactured homes;
 7. Use of unfair methods of competition or unfair or deceptive commercial acts or practices;
 8. Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this chapter;
 9. Employing unlicensed retail salespersons;
 10. Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this chapter or selling to dealers not licensed pursuant to this chapter manufactured homes which are to be sold in the Commonwealth to buyers as defined in this chapter;
 11. Having had a license revoked, suspended, or denied by the Board under this chapter; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this Commonwealth, would have been a violation under this chapter;
 12. Defrauding any buyer, to the buyer's damage, or any other person in the conduct of the regulant's business; or
 13. Failure to comply with any provisions of this chapter.
- B. The Board may revoke or deny renewal of an existing license or refuse to issue a license to any manufactured home broker, dealer, manufacturer or salesperson who is shown to have a substantial identity of interest with a manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the Board.
- C. Any person whose license is revoked or not renewed by the Board shall not be eligible for a license under any circumstances or under any name, except as provided by regulations of the Board pursuant to § 36-85.18.

§ 36-85.21. Notice and hearing.

The Board shall not suspend, revoke, or deny a license or refuse the renewal of a license, or impose a civil penalty, until a written notice of the complaint has been furnished to the regulant or applicant against whom the same is directed, and a hearing thereon has been held before the Board. Reasonable written notice of the time and place of the hearing shall be given to the regulant or applicant by certified mail to his last known address, as shown on the license or other record of information in possession of the Board. At any such hearing, the regulant or applicant shall have the right to be heard in person or through counsel. After the hearing, the Board shall have the power to deny, suspend, revoke or refuse to renew the license in question for violation of the provisions of this chapter. Immediate notice of any such action by the Board shall be given to the regulant or applicant in the same manner as provided herein for furnishing notice of hearing.

In the event of a conflict between the provisions of this section and the Administrative Process Act (§ 2.2-4000 et seq.), the provisions of the Administrative Process Act shall govern.

§ 36-85.22. Set-up requirements; effect on insurance policies.

Manufactured homes shall be set-up in accordance with the Code.

In the event that a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage of a nature that indicated the manufactured home was not set-up in the manner required by this section, the insurer issuing the homeowner's insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the manufactured home was not properly set-up.

§ 36-85.23. Warranties.

Each manufacturer, dealer, and supplier of manufactured homes shall warrant each new manufactured home sold in this Commonwealth, and the dealer shall warrant the set-up of each manufactured home if performed by or contracted for by the dealer, in accordance with the warranty requirements prescribed by this section for a period of at least twelve months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, and supplier are as follows:

1. The manufacturer warrants that all structural elements, plumbing systems, heating, cooling (if any), and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from defect.

2. The dealer warrants:
 - a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from defects. Alterations or modifications made by the dealer, without written permission of the manufacturer, shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any damage resulting therefrom.
 - b. That set-up operations performed by the dealer or by persons under contract to the dealer on the manufactured home are accomplished in compliance with the applicable Code standards for installation of manufactured homes.
 - c. That during the course of set-up and transportation of the manufactured home performed by the dealer or by persons under contract to the dealer, defects do not occur to the manufactured home.
3. The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

§ 36-85.24. Presenting claims for warranties and defects.

Whenever a claim for a warranty service or about a defect is made to a regulant, it shall be handled as provided by this chapter. A record shall be made of the name and address of each claimant and the date, substance, and disposition of each claim about a defect. The regulant may request that a claim be made in writing, but nevertheless shall record it as provided above, and may not delay service pending receipt of the written claim.

When the regulant notified is not the responsible party, he shall, in writing, immediately notify the claimant of that fact, and shall also, in writing, immediately notify the responsible party of the claim. When a responsible party is asked to remedy defects, such party may not fail to remedy those defects because another responsible party may also be responsible. Nothing herein shall prevent a responsible party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

Within the time limits provided in this chapter, the regulant shall either resolve the claim or determine that it is not justified. At any time a regulant determines that a claim for service is not justified in whole or part, he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the

claimant that he is entitled to complain to the Board. The complete mailing address of the Board shall be provided in the notice. Within five working days of receipt of a complaint, the Board shall send a complete copy thereof to the Director.

§ 36-85.25. Warranty service.

When a service agreement exists between or among a manufacturer, dealer, and supplier to provide warranty service, the agreement shall specify which such responsible party is to remedy warranty defects. Every such service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided in this chapter, of responsibility to perform warranty service. However, any responsible party undertaking such an agreement to perform the warranty service obligations of another shall thereby become responsible both to that other responsible party and to the buyer for his failure to adequately perform as agreed.

When no service agreement exists for warranty service, the responsible party as designated by the provisions of this chapter is responsible for remedying the warranty defects.

A defect shall be remedied within forty-five days of receipt of the written notification of the warranty claim, unless the claim is unreasonable or a bona fide reason exists for not remedying the defect within the forty-five-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this section, defects which constitute an imminent safety hazard to life and health shall be remedied within three days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock or leaking gas; or (iv) major structural failure. The Board may suspend this three-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

When the person remedying the defect is not the responsible party as designated by the provisions of this chapter, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct which coerces or requires a nonresponsible party to perform warranty service is a violation of this chapter.

Warranty service shall be performed at the site at which the manufactured home is initially delivered to the buyer, except for components which can be removed for service without undue inconvenience to the buyer.

Any responsible party shall have the right to complain to the Board when warranty service obligations under this chapter are not being enforced.

§ 36-85.26. Dealer alterations.

- A. No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this chapter or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection D. An unauthorized alteration or modification performed by a dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.
- B. An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alterations or modifications. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in the manufacturer being responsible for the warranty.
- C. The Board is authorized to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which define the alterations or modifications which must be made by qualified personnel in accordance with the applicable standards of the Code. The Board may require qualified personnel for those alterations and modifications which could impair the structural integrity or safety of the manufactured home.
- D. In order to be designated as a person qualified to alter or modify a manufactured home, a person shall comply with state licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

§ 36-85.27. Determining length of manufactured homes.

In any advertisement or other communication regarding the length of a manufactured home, a regulant shall not include the length of the towing assembly (hitch) in describing the length of the home.

§ 36-85.28. Limitation on damages; disclosure to buyer.

- A. If a buyer fails to accept delivery of a manufactured home, the manufactured home dealer may retain actual damages according to the following terms:
 - 1. If the manufactured home is a single section unit and is in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be \$1,000.
 - 2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$2,000.
 - 3. If the manufactured home is larger than a single section unit in the dealer's stock and is not specially ordered for the buyer, the maximum retention shall be \$4,000.
 - 4. If the manufactured home is larger than a single section unit and is specially ordered for the buyer from the manufacturer, the maximum retention shall be \$7,000.
- B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer, as listed in subsection A, for failure to take delivery of the manufactured home as purchased.

§ 36-85.29. Inspection of service records.

The Board is authorized to inspect the pertinent service records of a manufacturer, dealer, supplier, or broker relating to a written warranty claim or complaint made to the Board against such manufacturer, dealer, supplier, or broker. Every regulant shall send to the Board upon request and within ten days, a true copy of every document or record pertinent to any complaint or claim for service.

§ 36-85.30. Other remedies not excluded.

Nothing in this chapter, nor any decision by the Board, shall limit any right or remedy available to the buyer through common law or under any other statute.

§ 36-85.31. (Effective July 1, 2011) Recovery fund to be established.

- A. Each manufactured home manufacturer, dealer, broker and salesperson operating in the Commonwealth of Virginia shall be required to pay an initial assessment fee as set forth in subsection B to the Virginia Manufactured Housing Transaction Recovery Fund. Thereafter, assessment fees shall be assessed as necessary to achieve and maintain a minimum fund balance of \$250,000.

- B. Each applicant approved by the Board for a license as a manufactured home manufacturer, dealer, broker, or salesperson in accordance with the provisions of Article 1 (§ 36-85.16 et seq.) of this chapter shall pay into the fund the following assessment fees:
1. For a manufacturer - \$4,000 for each separate manufacturing facility payable in one installment or \$4,400 payable at \$2,200 per year for two years.
 2. For a dealer - \$500 per retail location.
 3. For a broker - \$500 per sales office.
 4. For a salesperson - \$50 per individual.
- C. All assessment fees collected under this article shall be deposited in the state treasury and the State Treasurer shall credit the amount paid into a special revenue fund from which appropriations may be utilized by the Board in accordance with the express purposes set forth in this article. The assets of the fund shall be invested in accordance with the advice of the State Treasurer. Interest earned on deposits constituting this fund shall accrue to the fund or may be used for the purposes of providing educational programs to the consumer about manufactured housing.

§ 36-85.32. Recovery from fund generally.

Any person who suffers any loss or damage by any act of a regulant that constitutes a violation of this chapter shall have the right to institute an action to recover from the recovery fund.

Upon a finding by the Board that a violation has occurred, the Board shall direct the responsible manufacturer, dealer, broker, or salesperson to pay the awarded amount to the claimant. If such amount is not paid within thirty days following receipt of the written decision of the Board and no appeal has been filed in court, the Board shall, upon request of the claimant, pay from the recovery fund the amount of the award to the claimant provided that:

1. The maximum claim of one claimant against the fund because of a single or multiple violations by one or more regulants shall be limited to \$40,000;
2. The fund balance is sufficient to pay the award;
3. The claimant has assigned the Board all rights and claims against the regulant; and
4. The claimant agrees to subrogate to the Board all rights of the claimant to the extent of payment.

The aggregate of claims against the fund for violations by any one regulant shall be limited by the Board to \$75,000 per manufacturer, \$35,000 per dealer, \$35,000 per broker, and \$25,000 per salesperson during any license period. If a claim has been made against the fund, and the Board has reason to believe there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payments from the fund involving such regulant for a period of not more than one year from the date on which the claimant is approved by the Board for an award from the fund. After this one-year period, if the aggregate of claims against the regulant exceeds the above limitations, said amount shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their awards remaining unpaid.

The amount of damages awarded by the Board shall be limited to actual, compensatory damages and shall not include attorney's fees for representation before the Board.

§ 36-85.33. Revocation of license upon payment from fund.

Upon payment to a claimant from the fund, the Board shall immediately revoke the license of the regulant whose conduct resulted in this payment. Any regulant whose license is revoked shall not be eligible to apply for a license under this chapter until the regulant has repaid in full the amount paid from the fund on his account, plus interest.

§ 36-85.34. Disciplinary action by Board.

The Board may take disciplinary action against any regulant for any violation of this chapter or the regulations of the Board. Full repayment of the amount paid from the fund on a regulant's account shall not nullify or modify the effect of any disciplinary proceeding against that regulant for any violation.

§ 36-85.35. Appeals from decision of the Board.

Appeals from a decision of the Board shall be to a circuit court with jurisdiction in the Commonwealth. An appeal must be made within thirty days of the date of the Board's order. Once made, an appeal shall stay the Board's order. Neither the regulant nor the Board shall be required to pay damages to the claimant until such time as a final order of the court is issued. The court may award reasonable attorney's fees and court costs to be paid by the recovery fund. Except as provided to the contrary herein, appeals pursuant to this section shall be in conformance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 36-85.36. Recovery fund administrative regulations.

The Board is authorized to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-

4000 et seq.) consistent with this chapter for the administration of the fund to assure the satisfaction of claims.

§ 36-97. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

"**Board**" means the Board of Housing and Community Development.

"**Review Board**" means the State Building Code Technical Review Board.

"**Building Code**" means the *Uniform Statewide Building Code* and building regulations adopted and promulgated pursuant thereto.

"**Code provisions**" means the provisions of the *Uniform Statewide Building Code* as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

"**Building regulations**" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

"**Municipality**" means any city or town in this Commonwealth.

"**Local governing body**" means the governing body of any city, county or town in this Commonwealth.

"**Local building department**" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of the *Building Code* and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents.

"**State agency**" means any state department, board, bureau, commission, or agency of this Commonwealth.

"**Building**" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the

words "or part or parts thereof" unless the context clearly requires a different meaning. "Building" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

"**Equipment**" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

"**Farm building or structure**" means a building or structure not used for residential purposes, located on farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm;
2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products;
3. Business or office uses relating to the farm operations;
4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm;
5. Storage or use of supplies and materials used on the farm; or
6. Implementation of best management practices associated with farm operations.

"**Construction**" means the construction, reconstruction, alteration, repair or conversion of buildings and structures.

"**Owner**" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building or structure.

"**Director**" means the Director of the Department of Housing and Community Development.

"**Structure**" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Structure" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be governed by construction and design

standards approved by the Commonwealth Transportation Board.

"Department" means the Department of Housing and Community Development.

36-98. Board to promulgate Statewide Code; other codes and regulations superseded; exceptions.

The Board is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. Such building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

However, such Code shall not supersede the regulations of other state agencies which require and govern the functional design and operation of building related activities not covered by the Uniform Statewide Building Code including but not limited to (i) public water supply systems, (ii) waste water treatment and disposal systems, and (iii) solid waste facilities. Nor shall state agencies be prevented from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance with provisions of the Uniform Statewide Building Code.

Such Code also shall supersede the provisions of local ordinances applicable to single-family residential construction that (a) regulate dwelling foundations or crawl spaces, (b) require the use of specific building materials or finishes in construction, or (c) require minimum surface area or numbers of windows; however, such Code shall not supersede proffered conditions accepted as a part of a rezoning application, conditions imposed upon the grant of special exceptions, special or conditional use permits or variances, conditions imposed upon a clustering of single-family homes and preservation of open space development through standards, conditions, and criteria established by a locality pursuant to subdivision 8 of § 15.2-2242 or § 15.2-2286.1, or land use requirements in airport or highway overlay districts, or historic districts created pursuant to § 15.2-2306, or local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

§ 36-98.01. Mechanics' lien agent included on building permit for residential property at request of applicant.

In addition to any information required by the Uniform Statewide Building Code, a building permit issued for any one- or two-family residential dwelling unit shall at the time of issuance contain, at the request of the applicant, the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1. If the designation of a mechanics' lien agent is not so requested by the applicant, the building permit shall at the time of issuance state that none has been designated with the words "None Designated."

§ 36-98.1. State buildings; exception for certain assets owned by the Department of Transportation.

A. The Building Code shall be applicable to all state-owned buildings and structures, and to all buildings and structures built on state-owned property, with the exception that §§ 2.2-1159 through 2.2-1161 shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

Any state-owned building or structure, or building or structure built on state-owned property, for which preliminary plans were prepared or on which construction commenced after the initial effective date of the Uniform Statewide Building Code, shall remain subject to the provisions of the Uniform Statewide Building Code that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of the Building Code.

Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for any state-owned buildings or structures and for all buildings and structures built on state-owned property. The Department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It may provide for the (i) inspection of state-owned buildings or structures and for all buildings and structures built on state-owned property and (ii) enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested.

State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the Department of General Services. The Department of General Services may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Department of General Services shall provide the local building department with a written summary of its reasons for doing so.

B. Notwithstanding the provisions of subsection A and § 27-99, roadway tunnels and bridges owned by the

Department of Transportation shall be exempt from the Building Code and the Statewide Fire Prevention Code Act (§ 27-94 et seq.). The Department of General Services shall not have jurisdiction over such roadway tunnels, bridges, and other limited access highways; provided, however, that the Department of General Services shall have jurisdiction over any occupied buildings within any Department of Transportation rights-of-way that are subject to the Building Code.

Roadway tunnels and bridges shall be designed, constructed, and operated to comply with fire safety standards based on nationally recognized model codes and standards to be developed by the Department of Transportation in consultation with the State Fire Marshal. Emergency response planning and activities related to the standards shall be developed by the Department of Transportation and coordinated with the appropriate local officials and emergency services providers. On an annual basis the Department of Transportation shall provide a report on the maintenance and operability of installed fire protection and detection systems in roadway tunnels and bridges to the State Fire Marshal.

- C. Except as provided in subsection D of § 23-38.109, and notwithstanding the provisions of subsection A, at the request of a public institution of higher education, the Department, as further set forth in this subsection, shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.). The Department shall publish administrative procedures that shall be followed in contracting with a building official of the locality. The authority granted to a public institution of higher education under this subsection to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88.
- D. This section shall not apply to the nonhabitable structures, equipment, and wiring owned by a public service company, a certificated provider of telecommunications services, or a franchised cable operator that are built on rights-of-way owned or controlled by the Commonwealth Transportation Board.

§ 36-98.2. Appeals from decision of Building Official regarding state-owned buildings.

Appeals by the involved state agency from the decision of the Building Official for state-owned buildings shall be made directly to the State Building Code Technical Review Board.

§ 36-98.3. Amusement devices.

- A. The Board shall have the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices. "Amusement device" means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion, but excluding snow tubing parks and rides, ski terrain parks, ski slopes and ski trails, and (ii) passenger tramways. A "passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. Regulations promulgated hereunder shall include provisions for the following:
 - 1. The issuance of certificates of inspection prior to the operation of an amusement device;
 - 2. The demonstration of financial responsibility of the owner or operator of the amusement device prior to the operation of an amusement device;
 - 3. Maintenance inspections of existing amusement devices;
 - 4. Reporting of accidents resulting in serious injury or death;
 - 5. Immediate investigative inspections following accidents involving an amusement device that result in serious injury or death;
 - 6. Certification of amusement device inspectors;
 - 7. Qualifications of amusement device operators;
 - 8. Notification by amusement device owners or operators of an intent to operate at a location within the Commonwealth; and
 - 9. A timely reconsideration of the decision of the local building department when an amusement device owner or operator is aggrieved by such a decision.
- B. In promulgating regulations, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations. Where appropriate, the Board shall establish separate standards for mobile amusement devices and for amusement devices permanently affixed to a site.
- C. To assist the Board in the administration of this section, the Board shall appoint an Amusement Device Technical Advisory Committee, which shall

be composed of five members who, by virtue of their education, training or employment, have demonstrated adequate knowledge of amusement devices or the amusement industry. The Board shall determine the terms of the Amusement Device Technical Advisory Committee members. The Amusement Device Technical Advisory Committee shall recommend standards for the construction, maintenance, operation and inspection of amusement devices, including the qualifications of amusement device operators and the certification of inspectors, and otherwise perform advisory functions as the Board may require.

- D. Inspections required by this section shall be performed by persons certified by the Board pursuant to subdivision 6 of § 36-137 as competent to inspect amusement devices. The provisions of § 36-105 notwithstanding, the local governing body shall enforce the regulations promulgated by the Board for existing amusement devices. Nothing in this section shall be construed to prohibit the local governing body from authorizing inspections to be performed by persons who are not employees of the local governing body, provided those inspectors are certified by the Board as provided herein. The Board is authorized to conduct or cause to be conducted any inspection required by this section, provided that the person performing the inspection on behalf of the Board is certified by the Board as provided herein.
- E. To the extent they are not superseded by the provisions of this section and the regulations promulgated hereunder, the provisions of this chapter and the Uniform Statewide Building Code shall apply to amusement devices.

§ 36-99. Provisions of Code; modifications.

- A. The Building Code shall prescribe building regulations to be complied with in the construction and rehabilitation of buildings and structures, and the equipment therein as defined in § 36-97, and shall prescribe regulations to ensure that such buildings and structures are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations, including procedures to be used by the local building department in the evaluation and granting of modifications for any provision of the Building Code, provided the spirit and functional intent of the Building Code are observed and public health, welfare and safety are assured. The provisions of the Building Code and modifications thereof shall be such as to protect the health, safety and welfare of the residents of the Commonwealth, provided that buildings and structures should be permitted to be constructed, rehabilitated and maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including

provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

- B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the International Code Council and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § 35.1-1 and licensed as such by the Board of Health pursuant to Chapter 2 (§ 35.1-11 et seq.) of Title 35.1. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.
- C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the local building department, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.
- D. The Board, upon a finding that sufficient allegations exist regarding failures noted in several localities of performance standards by either building materials, methods, or design, may conduct hearings on such allegations if it determines that such alleged failures, if proven, would have an adverse impact on the health, safety, or welfare of the citizens of the Commonwealth. After at least 21 days' written notice, the Board shall convene a hearing to consider such allegations. Such notice shall be given to the known manufacturers of the subject building material and as many other interested parties, industry representatives, and trade groups as can reasonably be identified. Following the hearing, the Board, upon finding that (i) the current technical or administrative Code provisions allow use of or result in defective or deficient building materials, methods, or designs, and (ii) immediate action is necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, may issue amended regulations establishing interim performance standards and Code provisions for the installation, application, and use of such building materials, methods or designs in the Commonwealth. Such amended regulations shall become effective upon their publication in the

Virginia Register of Regulations. Any amendments to regulations adopted pursuant to this subsection shall become effective upon their publication in the Virginia Register of Regulations and shall be effective for a period of 24 months or until adopted, modified, or repealed by the Board.

§ 36-99.01. Provisions related to rehabilitation of existing buildings.

- A The General Assembly hereby declares that (i) there is an urgent need to improve the housing conditions of low and moderate income individuals and families, many of whom live in substandard housing, particularly in the older cities of the Commonwealth; (ii) there are large numbers of older residential buildings in the Commonwealth, both occupied and vacant, which are in urgent need of rehabilitation and which must be rehabilitated if the State's citizens are to be housed in decent, sound, and sanitary conditions; and (iii) the application of those building code requirements currently in force to housing rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.
- B The General Assembly further declares that (i) there is an urgent need to improve the existing condition of many of the Commonwealth's stock of commercial properties, particularly in older cities; (ii) there are large numbers of older commercial buildings in the Commonwealth, both occupied and vacant, that are in urgent need of rehabilitation and that must be rehabilitated if the citizens of the Commonwealth are to be provided with decent, sound and sanitary work spaces; and (iii) the application of the existing building code to such rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.
- C The Board is hereby directed and empowered to make such changes as are necessary to fulfill the intent of the General Assembly as expressed in subsections A and B, including, but not limited to amendments to the Building Code and adequate training of building officials, enforcement personnel, contractors, and design professionals throughout the Commonwealth.

§ 36-99.2. Standards for replacement glass.

Any replacement glass installed in buildings constructed prior to the effective date of the *Uniform Statewide Building Code* shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

§ 36-99.3. Smoke detectors and automatic sprinkler systems in colleges and universities.

- A College or university buildings containing dormitories for sleeping purposes shall be provided with battery or AC powered smoke detector devices installed therein in accordance with the *Uniform Statewide Building Code*. All public or private college and university dormitories shall have installed and use due diligence in maintaining in good working order such detectors regardless of when the building was constructed.
- B The Board of Housing and Community Development shall promulgate regulations pursuant to item (ii) of subdivision C5 of § 2.2-4006 establishing standards for automatic sprinkler systems throughout all public or private college or university buildings which are (i) more than seventy-five feet or more than six stories high and (ii) used, in whole or in part, as dormitories to house students. Such buildings shall be equipped with automatic sprinkler systems by September 1, 1999, regardless of when such buildings were constructed.
- C The chief administrative office of the college or university shall obtain a certificate of compliance with the provisions of this section from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Department of General Services.
- D The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled twenty-four hours a day by military guards.

§ 36-99.4. Smoke detectors in certain juvenile care facilities.

Battery or AC-powered smoke detector devices shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children or juveniles which are operated by or under the auspices of the Department of Juvenile Justice, regardless of when the building was constructed, in accordance with the provision of the *Uniform Statewide Building Code* by July 1, 1986. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke detector devices.

§ 36-99.5. Smoke detectors for the deaf and hearing-impaired.

Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than twenty individuals;
2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or
3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each seventy units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than thirty-five units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing-impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke detector, not to exceed the original cost or replacement cost, whichever is greater, of the smoke detector. Rental fees shall not be increased as compensation for this requirement.

Landlords shall notify hearing-impaired tenants of the availability of special smoke detectors; however, no landlord shall be civilly or criminally liable for failure to so notify. New tenants shall be asked, in writing, at the time of rental, whether visual smoke detectors will be needed.

Failure to comply with the provisions of this section within a reasonable time shall be punishable as a Class 3 misdemeanor.

This law shall have no effect upon existing local law or regulation which exceeds the provisions prescribed herein; however, any locality with an ordinance shall follow a uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.).

§ 36-99.5:1. Smoke detectors and other fire detection and suppression systems in assisted living facilities, adult day care centers and nursing homes and facilities.

- A Battery- or AC-powered smoke detector devices shall be installed in all assisted living facilities and adult day care centers licensed by the Department of Social Services, regardless of when the building was

constructed. The location and installation of the smoke detectors shall be determined by the Uniform Statewide Building Code.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the facility or center is located, or in the case of state-owned buildings, from the Department of General Services.

The licensee shall maintain the smoke detector devices in good working order.

- B The Board of Housing and Community Development shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for requiring (i) smoke detectors and (ii) such other fire detection and suppression systems as deemed necessary by the Board to increase the safety of persons in assisted living facilities, residential dwelling units designed or developed and marketed to senior citizens, nursing homes and nursing facilities. All nursing homes and nursing facilities which are already equipped with sprinkler systems shall comply with regulations relating to smoke detectors.

§ 36-99.6. Underground and aboveground storage tank inspections.

- A. The Board of Housing and Community Development shall incorporate, as part of the Building Code, regulations adopted and promulgated by the State Water Control Board governing the installation, repair, upgrade and closure of underground and aboveground storage tanks.
- B. Inspections undertaken pursuant to such Building Code regulations shall be done by employees of the local building department or another individual authorized by the local building department.

§ 36-99.6:2. Installation of in-building emergency communication equipment for emergency public safety personnel.

The Board of Housing and Community Development shall promulgate regulations as part of the Building Code requiring such new commercial, industrial, and multifamily buildings as determined by the Board be (i) designed and constructed so that emergency public safety personnel may send and receive emergency communications from within those structures or (ii) equipped with emergency communications equipment so that emergency public safety personnel may send and receive emergency communications from within those structures.

For the purposes of this section:

"**Emergency communications equipment**" includes, but is not limited to, two-way radio communications, signal boosters, bi-directional amplifiers, radiating cable systems or internal multiple antenna, or any combination of the foregoing.

"**Emergency public safety personnel**" includes firefighters, emergency medical services personnel, law-enforcement officers, and other emergency public safety personnel routinely called upon to provide emergency assistance to members of the public in a wide variety of emergency situations, including, but not limited to, fires, medical emergencies, violent crimes, and terrorist attacks.

§ 36-99.6.3. Regulation of HVAC facilities.

The Board shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for heating, ventilation, and air conditioning (HVAC) facilities in new, privately owned residential dwellings.

§ 36-99.7. Asbestos inspection in buildings to be renovated or demolished; exceptions.

- A. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1985, to be renovated or demolished until the local building department receives certification from the owner or his agent that the affected portions of the building have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M), and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.1101). Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR 763 and subsequent amendments thereto.
- B. To meet the inspection requirements of subsection A except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floor covering, or siding materials may be satisfied by a statement that the materials to be repaired or replaced are assumed to contain friable asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor.

- C. The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units, unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than thirty-five cubic feet off facility components where the length or area could not be measured previously.
- D. An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

§ 36-99.8. Skirting.

Manufactured homes installed or relocated pursuant to the Building Code shall have skirting installed within sixty days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of eighteen inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the Building Code.

As used in this section, "skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

§ 36-99.9. Standards for fire suppression systems in certain facilities.

The Board of Housing and Community Development shall promulgate regulations by October 1, 1990, in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, establishing standards for fire suppression systems in nursing facilities and nursing

homes, regardless of when such facilities or institutions were constructed. In the development of these standards, the Board shall seek input from relevant state agencies.

Units consisting of certified long-term care beds described in this section and § 32.1-126.2 located on the ground floor of general hospitals shall be exempt from the requirements of this section.

§ 36-99.9:1. Standards for fire suppression systems in hospitals.

The Board of Housing and Community Development shall promulgate regulations, to be effective by October 1, 1995, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), establishing standards for automatic sprinkler systems in hospitals, regardless of when such facilities were constructed. In the development of these standards, the Board shall seek input from relevant state and local agencies as well as affected institutions.

For the purposes of this section and § 32.1-126.3, "automatic sprinkler system" means a device for suppressing fire in patient rooms and other areas of the hospital customarily used for patient care.

§ 36-99.10:1. Standards for installation of acoustical treatment measures in certain buildings and structures.

The Board of Housing and Community Development shall promulgate regulations by October 1, 1994, for installation of acoustical treatment measures for construction in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Such regulations shall provide for implementation at the option of a local governing body pursuant to the provisions of § 15.2-2295.

§ 36-99.11. Identification of disabled parking spaces by above grade signage.

- A All parking spaces reserved for the use of persons with disabilities shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of persons with disabilities. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the disabled within the meaning of this section.
- B All above grade disabled parking space signs shall have the bottom edge of the sign no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of the Uniform Statewide Building Code.

C Building owners shall install above grade signs identifying all parking spaces reserved for the use of persons with disabilities in accordance with this section and the applicable provisions of the Uniform Statewide Building Code by January 1, 1993.

D Effective July 1, 1998, all disabled parking signs shall include the following language: PENALTY, \$100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four feet above the parking surface.

§ 36-100. Notice and hearings on adoption of Code, amendments and repeals.

The adoption, amendment, or repeal of any Code provisions shall be exempt from the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, pursuant to subdivision A 12 of § 2.2-4006. Before the adoption, amendment, or repeal of any Code provisions, the Board shall hold at least one public hearing. In addition to the notice requirement contained therein, the Board shall notify in writing the building official or, where none, the local governing body of every city or county in the Commonwealth. At any such hearing all persons desiring to do so shall be afforded an opportunity to present their views.

§ 36-101. Effective date of Code; when local codes may remain in effect.

No Code provisions shall be made effective prior to January 1, 1973, or later than September 1, 1973; provided that the initial Building Code shall not become effective earlier than 180 days after the publication thereof.

It is further provided that where, in the opinion of the Review Board, local codes are in substantial conformity with the State Code the local code may, with the concurrence of the Review Board remain in effect for two years from the effective day of the State Code for transition to implementation of the State Code.

§ 36-102. Modification, amendment or repeal of Code provisions.

The Board may modify, amend or repeal any Code provisions from time to time as the public interest requires, after notice and hearing as provided in § 36-100 of this chapter. No such modification or amendment shall be made effective earlier than thirty days from the adoption thereof.

§ 36-103. Buildings, etc., existing or projected before effective date of Code.

Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as part of the Building Code, building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Subsequent reconstruction, renovation, repair or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to equipment. However, building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the Building Code in effect at the time a building was constructed without meeting current Building Code requirements, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the Uniform Statewide Building Code.

§ 36-104. Code to be printed and furnished on request; true copy.

The Department shall have printed from time to time and keep available in pamphlet form all Code provisions. Such pamphlets shall be furnished upon request to members of the public. A true copy of all such provisions adopted and in force shall be kept in the office of the Department, accessible to the public. The Department may charge a reasonable fee for distribution of the Building Code based on production and distribution costs.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators.

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department

for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town situated within their respective boundaries.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure,

the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.
5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.
6. A locality may require by ordinance that any landmark, building or structure that contributes to a district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board unless the local maintenance code official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that it shall be razed, demolished or moved.

For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to or is consistent with the historic or architectural qualities, historic associations, or values for which the district was established pursuant to § 15.2-2306, because it (i) was present during the period of significance, (ii) relates to the documented significance of the district, and (iii) possesses historic integrity or is capable of yielding important information about the period.

7. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. For purposes of this section, "defray

the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the maintenance code official for the locality.

- D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a building permit as otherwise provided under this chapter, however, notwithstanding any provision of law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on the owner's property, such applicant shall not be denied a permit under the Building Code solely upon the basis that the property owner has financial obligations to the locality that constitute a lien on such property in favor of the locality. If such applicant is the property owner, in addition to payment of the fees for issuance of a building permit, the locality may require full payment of any and all financial obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For purposes of this subsection, "property owner" means the owner of such property as reflected in the land records of the circuit court clerk where the property is located, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent.

§ 36-105.01. Elevator inspections by contract.

The inspection of elevators in existing buildings and the enforcement of the Building Code for elevators shall be in compliance with the regulations adopted by the Board. The building department may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership or corporation who has met the certification requirements established by the Board. The Board shall establish such qualifications and procedures as it deems necessary to certify an approved agency. Such qualifications and procedures shall be based upon nationally accepted standards.

§ 36-105.1. Inspection and review of plans of buildings under construction.

Inspections of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform

Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection shall pass to the State Fire Marshal pursuant to the Statewide Fire Prevention Code in those localities which do not enforce the Statewide Fire Prevention Code (§ 27-94 et seq.).

§ 36-105.1:1. Rental inspections; rental inspection districts; exemptions; penalties.

A. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit which has its own cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

B. Localities may inspect residential rental dwelling units. The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with the Building Code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided in subdivision B 3, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section, and
2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating, or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental

inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize one or more locality-wide rental inspection districts and a local governing body shall limit the boundaries of the proposed rental inspection districts to such areas of the locality that meet the criteria set out in this subsection, or

3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of the Building Code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

C.

1. Notification to owners of dwelling units. Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

2. Notification by owners of dwelling units to locality. The rental inspection ordinance may include a provision that requires the owners of

dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to \$50. For purposes of this subsection, notice sent by regular first class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

- D. Initial inspection of dwelling units when rental inspection district is established. Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for in subsection C, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such property.
- E. Provisions for initial and periodic inspections of multifamily dwelling units. If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10 percent of the dwelling units, of a multifamily development, which includes all of the multifamily buildings which are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such

multifamily development, the building department may inspect as many dwelling units as necessary to enforce the Building Code, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in subsection H.

- F.
 - 1. Follow-up inspections. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under the Building Code to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants.
 - 2. Periodic inspections. Except as provided in subdivision F 1, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.
- G. Exemptions from rental inspection ordinance. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with the Building Code, provided that there are no violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided in subdivision F 2, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of the Building Code during the exemption period, the building department may revoke the exemption previously granted under this section.
- H. A local governing body may establish a fee schedule for enforcement of the Building Code, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

- I. The provisions of this section shall not, in any way, alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55.
- J. The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 to enforce the Building Code.
- K. Unless otherwise provided in this section, penalties for violation of this section shall be the same as the penalties provided in the Building Code.

§ 36-105.3. Security of certain records.

Building Code officials shall institute procedures to ensure the safe storage and secure handling by local officials having access to or in the possession of engineering and construction drawings and plans containing critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.).

§ 36-106. Violation a misdemeanor; civil penalty.

- A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500. In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense committed within less than five years after a first offense under this chapter shall be punished by a fine of not less than \$1,000 nor more than \$2,500. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than \$500 nor more than \$2,500. Any person convicted of a third or subsequent offense involving the same property committed within 10

years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than 10 days and a fine of not less than \$2,500 nor more than \$5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.

- B. Violations of any provision of the Building Code, adopted and promulgated pursuant to § 36-103, that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in § 25.1-400, in a locality where the local governing body has taken official action to enforce such provisions, shall be deemed a misdemeanor and any owner or any other person, firm, or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500. In addition, each day the violation continues after conviction or the expiration of the court-ordered abatement period shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense, committed within less than five years after a first offense under this chapter shall be punished by confinement in jail for not more than five days and a fine of not less than \$1,000 nor more than \$2,500, either or both. Provided, however, that the provision for confinement in jail shall not be applicable to any person, firm, or corporation, when such violation involves a multiple-family dwelling unit. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than \$500 nor more than \$2,500. Any person convicted of a third or subsequent offense involving the same property, committed within 10 years of an offense under this chapter after having been at least twice previously convicted, shall be punished by confinement in jail for not more than 10 days and a fine of not less than \$2,500 nor more than \$5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.
- C. Any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the Code which are not abated, or otherwise remedied through hazard control, promptly after receipt of notice of violation from the local enforcement officer.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not more than \$350 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$4,000. Designation of a particular Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator and a representative of the locality shall agree in writing to terms of abatement or remediation of the violation within six months after the date of payment of the civil penalty.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate, or otherwise remedy through hazard control, the violation within six months of the date of the assessment of the civil penalty.

If the violation concerns a nonresidential building or structure, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court may order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Any such violator so ordered shall abate, or otherwise remedy through hazard control, the violation within the time specified by the court.

- D. Any owner or any other person, firm or corporation violating any Code provisions relating to lead hazard controls that poses a hazard to the health of pregnant women and children under the age of six years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than \$2,500. If the court convicts pursuant to this subsection and sets a time by which such hazard must be controlled, each day the hazard remains uncontrolled after the time set for the lead hazard control has expired shall constitute a separate violation of the Uniform Statewide Building Code.

The landlord shall maintain the painted surfaces of the dwelling unit in compliance with the International Property Maintenance Code of the Uniform Statewide Building Code. The landlord's failure to do so shall be enforceable in accordance with the Uniform Statewide Building Code and shall entitle the tenant to terminate the rental agreement.

Termination of the rental agreement or any other action in retaliation against the tenant after written notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an authorized occupant in the dwelling unit, has an elevated blood lead level, shall constitute retaliatory conduct in violation of § 55-248.39.

- E. Nothing in this section shall be construed to prohibit a local enforcement officer from issuing a summons or a ticket for violation of any Code provision to the lessor or sublessor of a residential dwelling unit, provided a copy of the notice is served on the owner.
- F. Any prosecution under this section shall be commenced within the period provided for in § 19.2-8.

§ 36-107. Employment of personnel for administration of chapter.

Subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, the Director may employ such permanent and temporary clerical, technical and other assistants as are necessary or advisable for the proper administration of the provision of this chapter.

§ 36-107.1. Sale of residential structure with lead-based paint levels exceeding Code standards; penalty.

Whenever any property owner has been notified by local building officials or representatives of local health departments that any residential premise has levels of lead-based paint in violation of this chapter, such property owner shall notify prospective purchasers in writing of the presence of unacceptable levels of lead-based paint in such premises and the requirements concerning the removal of the same. Such notification shall include a copy of any notice the property owner received from local building officials or representatives of local health departments advising of the presence of unacceptable levels of lead-based paint in such premises.

The notice required herein shall be provided to prospective purchasers prior to the signing of a purchase or sales agreement or, if there is no purchase or sales agreement, prior to the signing of a deed. The requirements shall not apply to purchase and sales agreements or deeds signed prior to July 1, 1991. Transactions in which sellers have accepted written offers prior to July 1, 1991, but have not signed a purchase or sales agreement or a deed prior to July 1, 1991, shall be subject to the notice requirements.

Any person who fails to comply with the provisions of this section shall be liable for all damages caused by his failure to comply and shall, in addition, be liable for a civil penalty not to exceed \$1,000.

§ 36-108. Board continued; members.

There is hereby continued, in the Department, the State Building Code Technical Review Board, consisting of 14 members, appointed by the Governor subject to confirmation by the General Assembly. The members shall include one member who is a registered architect, selected from a slate presented by the Virginia Society of the American Institute of Architects; one member who is a professional engineer in private practice, selected from a slate presented by the Virginia Society of Professional Engineers; one member who is a residential builder, selected from a slate presented by the Home Builders Association of Virginia; one member who is a general contractor, selected from a slate presented by the Virginia Branch, Associated General Contractors of America; two members who have had experience in the field of enforcement of building regulations, selected from a slate presented by the Virginia Building Officials Conference; one member who is employed by a public agency as a fire prevention officer, selected from a slate presented by the Virginia Fire Chiefs Association; one member whose primary occupation is commercial or retail construction or operation and maintenance, selected from a slate presented by the Virginia chapters of Building Owners and Managers Association, International; one member whose primary occupation is residential, multifamily housing construction or operation and maintenance, selected from a slate presented by the Virginia chapters of the National Apartment Association; one member who is an electrical

contractor who has held a Class A license for at least 10 years; one member who is a plumbing contractor who has held a Class A license for at least 10 years and one member who is a heating and cooling contractor who has held a Class A license for at least 10 years, both of whom are selected from a combined slate presented by the Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America; and two members from the Commonwealth at large who may be members of local governing bodies. The members shall serve at the pleasure of the Governor.

§ 36-109. Officers; secretary.

The Review Board, under rules adopted by itself, shall elect one of its members as chairman, for a term of two years, and may elect one of its members as vice-chairman. The Review Board may also elect a secretary, who may be a nonmember.

§ 36-111. Oath and bonds.

Before entering upon the discharge of his duties, each member of the Review Board shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein; and shall give bond with corporate surety in such penalty as may be fixed by the Governor, conditioned upon the faithful discharge of his duties. The premiums on such bonds shall be paid for as other expenses of the Department are paid.

§ 36-112. Meetings.

The Review Board shall meet at the call of the chairman, or at the written request of at least three of its members; provided that it shall act within thirty days following receipt of any appeal made under the provisions of this chapter.

§ 36-113. Offices.

The Review Board shall be furnished adequate space and quarters in the suite of offices of the Department, and such Board's main office shall be therein.

§ 36-114. Board to hear appeals.

The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Virginia Amusement Device Regulations adopted pursuant to § 36-98.3, the *Fire Prevention Code* adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), and rules and regulations implementing the Industrialized Building Safety Law (§ 36-70 et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative

Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required.

§ 36-115. Subpoenas; witnesses; designation of subordinates.

In any matter before it on appeal for hearing and determination, the Review Board, or its designated subordinates, may compel the attendance of all needed witnesses in like manner as a circuit court, save the Review Board shall not have the power of imprisonment. In taking evidence, the chairman or any member of the Review Board, or its designated subordinates, shall have the power to administer oaths to witnesses. Where a designated subordinate of the Review Board presides over hearings on appeals, such subordinate shall submit recommended findings and a decision to the Review Board pursuant to § 2.2-4020.

§ 36-117. Record of decisions.

A record of all decisions of the Review Board, properly indexed, shall be kept in the office of such Board. Such record shall be open to public inspection at all times during business hours.

§ 36-118. Interpretation of Code; recommendation of modifications.

The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

§ 36-119. Rules and regulations under § 36-73 not superseded.

This chapter shall not amend, supersede, or repeal the rules and regulations prescribing standards to be complied with, in industrialized building units and mobile homes promulgated under § 36-73.

§ 36-119.1. Existing buildings.

This chapter shall not supersede provisions of the Fire Prevention Code promulgated by the Board under § 27-97, that prescribe standards to be complied with in existing buildings or structures, provided that such regulations shall not impose requirements that are more restrictive than those of the Uniform Statewide Building Code under which the buildings or structures were constructed. Subsequent alteration, enlargement, rehabilitation, repair, or conversion of the occupancy classification of such buildings and structures shall be subject to the construction and rehabilitation provisions of the Building Code.

§ 36-131. Definitions.

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

"Board" means the Board of Housing and Community Development.

"Consolidated Plan" means a document setting forth various housing and community development goals, objectives, and strategies to be followed by the Commonwealth in addressing housing and community development conditions in the Commonwealth and serving as the strategic plan for the programs established by the Department and, to the extent and in the manner determined in accordance with § 36-55.27:1, for the programs established by the Virginia Housing Development Authority. The Consolidated Plan will identify housing and community development needs in the Commonwealth; the level of investment and charges to state housing programs and community development necessary to address the need; the availability of state, local, federal, and nongovernmental sources of funds; and the appropriate mix of loans, grants, and other alternative funding methods for implementing the strategy.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development.

§ 36-132. Creation of Department; appointment of Director.

There is hereby created in the executive department the Department of Housing and Community Development. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with his own.

§ 36-132.1. Commission on Local Government.

The Department shall include the Commission on Local Government, which shall exercise the powers and duties described in §§ 15.2-1301 and 15.2-2303.2 and Chapters 29 (§ 15.2-2900 et seq.), 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 34 (§ 15.2-3400 et seq.), 35 (§ 15.2-3500 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), 40 (§ 15.2-4000 et seq.), and 41 (§ 15.2-4100 et seq.) of Title 15.2 and § 30-19.03.

§ 36-133. Director to supervise Department.

The Director of the Department of Housing and Community Development shall, under the direction and

control of the Governor be responsible for the supervision of the Department and shall exercise such other powers and perform such other duties as may be required of him by the Governor.

§ 36-134. General powers of Director.

The Director shall have the following general powers:

- A. To employ such personnel as may be required to carry out the purposes of this chapter.
- B. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of this Commonwealth.
- C. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.
- D. To do all acts necessary or convenient to carry out the purposes of this chapter.

§ 36-135. Board of Housing and Community Development; members; terms; chairman; appointment of ad hoc committee.

- A. The Board of Housing and Community Development within the Department of Housing and Community Development shall consist of 14 members as follows: 11 members, one representing each congressional district in the Commonwealth, who are appointed by the Governor, subject to confirmation by the General Assembly, the Executive Director of the Virginia Housing Development Authority as an ex officio voting member; a member of the Virginia Fire Services Board, to be appointed by the chairman of that Board; and the Director of Regulatory Compliance of the Virginia Building and Code Officials Association, who shall be a member of the Board's Codes and Standards Committee, but shall not serve as either the chairman of such committee or of the Board. Members shall serve for four-year terms and no member shall serve for more than two full successive terms. A chairman of the Board shall be elected annually by the Board.
- B. Whenever the Board of Housing and Community Development proposes a change to statewide building and fire regulations, the Board may convene an ad hoc committee, including but not limited to representatives

of those industry groups directly affected by such change, to advise the Board on such matters.

§ 36-136. Meetings of Board.

The Board shall meet at least once every three months, and on the call of the chairman, when, in his opinion, additional meetings are necessary.

§ 36-137. Powers and duties of Board; appointment of Building Code Academy Advisory Committee.

The Board shall exercise the following powers and duties, and such others as may be provided by law:

- 1. Provide a means of citizen access to the Department.
- 2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
- 3. Monitor the policies and activities of the Department and have the right of access to departmental information.
- 4. Advise the Governor and the Director on matters relating to housing and community development.
- 5. Make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary.
- 6. Issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.), Chapter 9 (§ 27-94 et seq.) of Title 27, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.
- 7. Levy by regulation up to two percent of permit fees authorized pursuant to §§ 36-98.3 and 36-105 to support training programs of the Building Code Academy established pursuant to § 36-139. Local building departments shall collect such levy and transmit it quarterly to the Department of Housing and Community Development. Localities that maintain, individual or regional, training academies accredited by the Department of Housing and Community Development shall retain such levy. However, such localities may send employees to training programs of the Building Code Academy upon payment of a fee calculated to cover the cost of such training. Any unspent balance shall be reappropriated each year for

the continued operation of the Building Code Academy.

The Board shall appoint a Building Code Academy Advisory Committee (the Committee) comprised of representatives of code enforcement personnel and construction industry professions affected by the provisions of the building and fire prevention regulations promulgated by the Board. Members of the Committee shall receive no compensation but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties in accordance with § 2.2-2813. The Committee shall advise the Board and the Director on policies, procedures, operations, and other matters pertinent to enhancing the delivery of training services provided by the Building Code Academy.

8. Establish general policies, procedures, and programs for the Virginia Housing Trust Fund established in Chapter 9 (§ 36-141 et seq.).
9. Determine the categories of housing programs, housing sponsors and persons and families of low and moderate income eligible to participate in grant or loan programs of the Virginia Housing Trust Fund and designate the proportion of such grants or loans to be made available in each category.
10. Advise the Director of the Department on the program guidelines required to accomplish the policies and procedures of the Virginia Trust Revolving Fund.
11. Advise the Virginia Housing Development Authority and the Director of the Department on matters relating to the administration and management of loans and grants from the Virginia Housing Trust Fund.
12. Establish the amount of the low-income housing credit, the terms and conditions for qualifying for such credit, and the terms and conditions for computing any credit recapture amount for the Virginia income tax return.
13. Serve in an advisory capacity to the Center for Housing Research established by § 23-135.7:14.
14. Advise the Department in the development of the Consolidated Plan Strategy to guide and coordinate the housing programs of the Department, the Virginia Housing Development Authority, and other state agencies and instrumentalities.
15. Advise the Governor and the Department on the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

16. Establish guidelines for the allocation of private activity bonds to local housing authorities in accordance with the provisions of the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2.

§ 36-139. Powers and duties of Director.

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.
2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.
3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.
4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.
5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.
6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.
7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.
8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the

elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.
10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.
11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).
12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).
13. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.
14. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.
15. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.
16. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.
17. Advising the Board on matters relating to policies and programs of the Virginia Housing Trust Fund.
18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Trust Fund and to carry out the policies and procedures established by the Board.
19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing Trust Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are to be made from such fund; directing the Virginia Housing

Development Authority and the Department as to the closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing the Department as to the regulation and monitoring of the ownership, occupancy and operation of the housing developments and residential housing financed or assisted by such loans and grants; and providing direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in such fund.

20. Advising the Board on matters relating to policies for the low-income housing credit and administering the approval of low-income housing credits as provided in § 36-55.63.
21. Establishing and administering program guidelines for a statewide homeless intervention program.
22. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and associated services to low-income households within the Commonwealth in accordance with applicable federal law and regulations.
23. Developing a strategy concerning the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.
24. Serving as the Executive Director of the Commission on Local Government as prescribed in § 15.2-2901 and perform all other duties of that position as prescribed by law.
25. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the creation and implementation of housing programs and community development for the purpose of meeting the housing needs of persons who have been released from federal, state, and local correctional facilities into communities.
26. Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2 jointly with the Virginia Small Business Financing Authority and the Virginia Housing Development Authority.
27. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

§ 36-139.1. Sale of real property for housing demonstration projects.

The Director is authorized to sell surplus real property belonging to the Commonwealth which is placed under the

control of the Department for the purpose of establishing owner-occupied residential housing demonstration projects, with the prior written approval of the Governor or his designee, who shall first consider the written recommendation of the Director of the Department of General Services. The methods, terms and conditions of sale shall be developed in cooperation with the Department of General Services. Any contract of sale or deed of conveyance shall be approved as to form by the Attorney General or one of his deputies or assistant attorneys general. The proceeds from all such sales shall be handled in the manner prescribed in subsection H of § 2.2-1156.

§ 36-139.5. Power to enter into agreements with owners of housing developments eligible for federal low-income housing credits.

The Department may enter into agreements with the owners of housing developments which are or will be eligible for low-income housing credits under the United States Internal Revenue Code. Any such agreement shall contain covenants and restrictions as shall be required by the United States Internal Revenue Code and such other provisions as the Department shall deem necessary or appropriate. Any such agreement shall be enforceable in accordance with its terms in any court of competent jurisdiction in the Commonwealth by the Department or by such other persons as shall be specified in the United States Internal Revenue Code. Any such agreement, when duly recorded as a restrictive covenant among the land records of the jurisdiction or jurisdictions in which the development is located, shall run with the land and be binding on the successors and assigns of the owner. All references in this section to the United States Internal Revenue Code shall include any amendments thereto and any regulations promulgated thereunder, as the foregoing may be or become effective at any time.

§ 36-139.5:1. Eligibility for Industrial Site Development Program.

The Department, in determining eligibility for the Industrial Site Development Program, shall allow exceptions to the Department's minimum requirement of 200 net developable acres because of geographic topographic or land availability limitations.

§ 36-139.6. Additional powers and duties of Director; oversight of planning district commissions.

The Director of the Department of Housing and Community Development shall have the following powers and duties relating to oversight of planning district commissions:

1. To recommend to the Governor the level of state general appropriation funding for each planning district commission, taking into consideration the minimum funding level necessary for operation, the

population of each district, and other factors considered appropriate;

2. To distribute state general appropriation funding to planning district commissions consistent with the provisions of this chapter and Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2;
3. To administer the Regional Cooperation Incentive Fund in accordance with § 15.2-4217;
4. To provide technical assistance to planning district commissions regarding regional approaches to area-wide problems. Assistance may be initiated by the Department, individual local governments, or planning district commissions;
5. To require the submission of annual programmatic and financial information by each planning district commission in a format prescribed by the Director;
6. To prepare a biennial report to the Governor and the General Assembly which identifies the activities and other information deemed appropriate by the Director concerning planning district commissions, including findings as to planning district commissions which are not complying with Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2. Copies of the biennial report shall also be sent to the Commission on Local Government, Department of Small Business and Supplier Diversity, Department of Conservation and Recreation, Department of Environmental Quality, Department of Planning and Budget, Department of Transportation, Virginia Economic Development Partnership, and others upon request; and
7. To establish the Virginia Planning District Commission Council made up of the chairman or designated representative from each planning district commission to advise Department staff on programs, rules and regulations for the planning district commissions. Technical committees of planning district commission staff, state and local agency staff, and private sector individuals as needed, may be created.

§ 36-139.7. Boundaries of planning districts.

- A. The Department shall review the boundaries of planning districts following every United States decennial census of population. The Department shall also review the boundaries upon the request of a member jurisdiction of a planning district. An initial review shall be conducted prior to July 1, 1996. Upon concluding such review, the Department shall, subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), make adjustments to the boundaries of planning districts as it deems advisable.

- B. The Department shall consider the following criteria in making determinations as to the governmental subdivisions to be included in a planning district: recognition of communities of interest among the governmental subdivisions, recognition of common economic and market interests, the ease of communications and commissioner travel time, metropolitan statistical area boundaries designated by the federal government, a population base adequate to ensure financial viability, and geographic factors and natural boundaries. In making such determination, the Department shall also consider the wishes of a governmental subdivision within or surrounding a proposed planning district, as expressed by resolution of its governing body.
- C. In conducting the boundaries review, the Department shall consult with the governing bodies of the governmental subdivisions within and adjoining a planning district which is proposed to be changed and shall hold such public and other hearing as it may deem advisable, provided at least one public hearing shall be held in each planning district which is proposed to be changed.
- D. To the extent practical, upon completion of a statutory review of planning district boundaries, state agencies may provide for sorting local statistical data according to planning district geography for external use of information for state, regional and local strategic and economic development planning.

§ 36-156.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"**Authority**" means the Virginia Resources Authority.

"**Bona fide prospective purchaser**" means a person who acquires ownership, or proposes to acquire ownership, of real property affected by defective drywall.

"**Cost**," as applied to any project financed under the provisions of this chapter, means the reasonable and necessary costs incurred for carrying out all works and undertakings necessary or incident to the correction or elimination of defective drywall. It includes, without limitation, all necessary developmental, planning, and feasibility studies, surveys, plans, and specifications; architectural, engineering, financial, legal, or other special services; site assessments, remediation, containment, and demolition or removal of existing structures or portions thereof; the discharge of any obligation of the seller of such land, buildings, or improvements; labor; materials, machinery, and equipment; the funding of accounts and reserves that the Authority may require; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges

incurred prior to completion of the project; and the cost of other items that the Authority determines to be reasonable and necessary.

"**Defective drywall**" means drywall or similar building material composed of dried gypsum-based plaster that (i) contains elemental sulfur exceeding 10 parts per million as has been found in some drywall manufactured in the People's Republic of China and imported into the United States between 2004 and 2007 and, when exposed to heat, humidity, or both, releases elevated levels of hydrogen sulfide gas into the air or (ii) has been designated by the U.S. Consumer Product Safety Commission as a product with a product defect that constitutes a substantial product hazard within the meaning of § 15 (a)(2) of the Consumer Product Safety Act (15 U.S.C. § 2064(a)(2)).

"**Department**" means the Department of Housing and Community Development.

"**Director**" means the Director of the Department of Housing and Community Development.

"**Fund**" means the Virginia Defective Drywall Correction and Restoration Assistance Fund.

"**Innocent land owner**" means a person who holds any title, security interest, or any other interest in residential real property and who acquired that interest after the installation of defective drywall occurred.

"**Local government**" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision of the Commonwealth created by the General Assembly or otherwise created pursuant to the laws of the Commonwealth or any combination of the foregoing.

§ 36-156.2. Virginia Defective Drywall Correction and Restoration Assistance Fund established; uses.

- A There is hereby created and set apart a special, permanent, perpetual, and nonreverting fund to be known as the Virginia Defective Drywall Correction and Restoration Assistance Fund for the purposes of promoting the correction and restoration of residential property affected by the environmental problems attributable to defective drywall or overcoming obstacles to the remediation of such properties attributable to the real or presumed presence of defective drywall. The Fund shall consist of such sums that may be appropriated to the Fund by the General Assembly, sums from all receipts by the Fund from loans made by it, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants, awards, or other forms of financial assistance received by the Commonwealth.

- B The Authority shall administer and manage the Fund and establish the interest rates and repayment terms for loans made to eligible entities or individuals in accordance with a memorandum of agreement with the Department of Housing and Community Development. The Department of Housing and Community Development shall direct the distribution of loans or grants from the Fund to particular recipients based upon guidelines developed for this purpose. With approval from the Department of Housing and Community Development, the Authority may disperse moneys from the Fund for the payment of reasonable and necessary costs and expenses incurred in the administration and management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans for its management services.
- C All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check and signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies, and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be made by the Authority upon written request signed by the Director of the Department of Housing and Community Development.
- D The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.
- E The Department of Housing and Community Development may approve grants to local governments for the purposes of promoting the correction or restoration of residential real property and addressing environmental problems or obstacles to the correction or restoration of such properties. The grants may be used to pay the reasonable and necessary costs associated with the remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes or the stabilization or restoration of these structures or the demolition and removal of the existing structures or other work necessary to remediate or reuse the real property. The Department of Housing and Community Development may establish such terms and conditions as it deems appropriate and shall evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority shall disburse grants from the Fund in accordance with a written request from the Department of Housing and Community Development.
- F The Authority may make loans to local governments, public authorities, corporations, partnerships, or innocent landowners to finance or refinance the cost of any defective drywall restoration or remediation project for the purposes of promoting the restoration and redevelopment of residential real property and addressing real environmental problems or obstacles to reuse of these properties. The loans shall be used to pay the reasonable and necessary costs related to the restoration and redevelopment of residential real property for the remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes; stabilization or restoration of the affected properties; demolition and removal of existing structures; or other work necessary to remediate or reuse the real property. The Department of Housing and Community Development shall designate in writing the recipient of each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.
- G Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the loan recipient payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions, and other information as it may deem necessary or convenient. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the entity receiving the loan covenant and perform any of the following:

1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government, and (iii) any amounts necessary to create and maintain any required reserve.
 2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government.
 3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.
 4. Create and maintain other special funds as required by the Authority.
 5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:
 - a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title, and interest therein, to the Fund;
 - b. The procurement of insurance, guarantees, letters of credit, and other forms of collateral, security, liquidity arrangements, or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;
 - c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, for the purpose of financing, and the pledging of the revenues from such combined projects and undertakings to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;
 - d. The maintenance, replacement, renewal, and repair of the project; and
 - e. The procurement of casualty and liability insurance.
 6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time during the term of the loan.
 7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default.
- H All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings, and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.
- I Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.
- J The Department of Housing and Community Development, through its Director, shall have the authority to access and release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the balance of the Fund. If the Department of Housing and Community Development, through its Director, requests a disbursement in an amount exceeding the current Fund balance, the disbursement shall require the written approval of the Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including, but not limited to, personnel, administrative, and equipment costs and expenses directly incurred by the Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the Department of Housing and Community Development.
- K The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

L The Authority may, with the approval of the Department of Housing and Community Development, pledge, assign, or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment, or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned, or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned, or transferred in trust as set forth above and any payments of principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment, or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned, or transferred until no longer required for such purpose by the terms of the pledge, assignment, or transfer.

The Department of Housing and Community shall develop guidelines governing the use of the Fund and including criteria for project eligibility that considers the extent to which a grant or loan will facilitate the use or reuse of the existing residential property, the extent to which a grant or loan will meet the needs of a recipient, the potential restoration of the property, the economic and environmental benefits to the surrounding community, and the extent of the perceived or real environmental contamination at the site.

TITLE 40.1 – LABOR AND EMPLOYMENT

§ 40.1-51.8. Exemptions.

The provisions of this article shall not apply to any of the following:

1. Boilers or unfired pressure vessels owned or operated by the federal government or any agency thereof;
2. Boilers or fired or unfired pressure vessels used in or on the property of private residences or apartment houses of less than four apartments;

3. Boilers of railroad companies maintained on railborne vehicles or those used to propel waterborne vessels;
4. Hobby or model boilers as defined in § 40.1-51.19:1;
5. Hot water supply boilers, water heaters, and unfired pressure vessels used as hot water supply storage tanks heated by steam or any other indirect means when the following limitations are not exceeded:
 - a. A heat input of 200,000 British thermal units per hour;
 - b. A water temperature of 210° Fahrenheit;
 - c. A water-containing capacity of 120 gallons;
6. Unfired pressure vessels containing air only which are located on vehicles or vessels designed and used primarily for transporting passengers or freight;
7. Unfired pressure vessels containing air only, installed on the right-of-way of railroads and used directly in the operation of trains;
8. Unfired pressure vessels used for containing water under pressure when either of the following are not exceeded:
 - a. A design pressure of 300 psi; or
 - b. A design temperature of 210° Fahrenheit;
9. Unfired pressure vessels containing water in combination with air pressure, the compression of which serves only as a cushion, that do not exceed:
 - a. A design pressure of 300 psi;
 - b. A design temperature of 210° Fahrenheit; or
 - c. A water-containing capacity of 120 gallons;
10. Unfired pressure vessels containing air only, providing the volume does not exceed eight cubic feet nor the operating pressure is not greater than 175 pounds;
11. Unfired pressure vessels having an operating pressure not exceeding fifteen pounds with no limitation on size;
12. Pressure vessels that do not exceed:

- a. Five cubic feet in volume and 250 pounds per square inch gauge pressure;
 - b. One and one-half cubic feet in volume and 600 pounds per square inch gauge pressure; and
 - c. An inside diameter of six inches with no limitations on gauge pressure;
13. Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation;
14. Stationary American Society of Mechanical Engineers (ASME) LP-Gas containers used exclusively in propane service with a capacity that does not exceed 2,000 gallons if the owner of the container or the owner's servicing agent:
- a. Conducts an inspection of the container not less frequently than every five years, in which all visible parts of the container, including insulation or coating, structural attachments, and vessel connections, are inspected for corrosion, distortion, cracking, evidence of leakage, fire damage, or other condition indicating impairment;
 - b. Maintains a record of the most recent inspection of the container conducted in accordance with subdivision a; and
 - c. Makes the records required to be maintained in accordance with subdivision b available for inspection by the Commissioner;
15. Unfired pressure vessels used in and as a part of electric substations owned or operated by an electric utility, provided such electric substation is enclosed, locked, and inaccessible to the public; or
16. Coil type hot water boilers without any steam space where water flashes into steam when released through a manually operated nozzle, unless steam is generated within the coil or unless one of the following limitations is exceeded:
- a. Three-fourths inch diameter tubing or pipe size with no drums or headers attached;
 - b. Nominal water containing capacity not exceeding six gallons; and

- c. Water temperature not exceeding 350° Fahrenheit.

TITLE 54.1 – PROFESSIONS AND OCCUPATIONS

§ 54.1-400. Definitions.

As used in this chapter unless the context requires a different meaning:

"**Architect**" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture and whose competence has been attested by the Board through licensure as an architect.

The "**practice of architecture**" means any service wherein the principles and methods of architecture are applied, such as consultation, investigation, evaluation, planning and design, and includes the responsible administration of construction contracts, in connection with any private or public buildings, structures or projects, or the related equipment or accessories.

"**Board**" means the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects.

"**Certified interior designer**" means a design professional who meets the criteria of education, experience, and testing in the rendering of interior design services established by the Board through certification as an interior designer.

"**Improvements to real property**" means any valuable addition or amelioration made to land and generally whatever is erected on or affixed to land which is intended to enhance its value, beauty or utility, or adapt it to new or further purposes. Examples of improvements to real property include, but are not limited to, structures, buildings, machinery, equipment, electrical systems, mechanical systems, roads, and water and wastewater treatment and distribution systems.

"**Interior design**" by a certified interior designer means any service rendered wherein the principles and methodology of interior design are applied in connection with the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment. Such services relative to interior spaces shall include the preparation of documents for nonload-bearing interior construction, furnishings, fixtures, and equipment in order to enhance and protect the health, safety, and welfare of the public.

"**Land surveyor**" means a person who, by reason of his knowledge of the several sciences and of the principles of

land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, and whose competence has been attested by the Board through licensure as a land surveyor.

The "**practice of land surveying**" includes surveying of areas for a determination or correction, a description, the establishment or reestablishment of internal and external land boundaries, or the determination of topography, contours or location of physical improvements, and also includes the planning of land and subdivisions thereof. The term "planning of land and subdivisions thereof" shall include, but not be limited to, the preparation of incidental plans and profiles for roads, streets and sidewalks, grading, drainage on the surface, culverts and erosion control measures, with reference to existing state or local standards.

"**Landscape architect**" means a person who, by reason of his special knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and whose competence has been attested by the Board through licensure as a landscape architect.

The "**practice of landscape architecture**" by a licensed landscape architect means any service wherein the principles and methodology of landscape architecture are applied in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to projects principally directed at the functional and aesthetic use of land.

"**Professional engineer**" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer.

The "**practice of engineering**" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The term "practice of engineering" shall not include the service or maintenance of existing electrical or mechanical systems.

"**Residential wastewater**" means sewage (i) generated by residential or accessory uses, not containing storm water or

industrial influent, and having no other toxic, or hazardous constituents not routinely found in residential wastewater flows, or (ii) as certified by a professional engineer.

"**Responsible charge**" means the direct control and supervision of the practice of architecture, professional engineering, landscape architecture, or land surveying.

§ 54.1-402. Further exemptions from license requirements for architects, professional engineers, and land surveyors.

- A. No license as an architect or professional engineer shall be required pursuant to § 54.1-406 for persons who prepare plans, specifications, documents and designs for the following, provided any such plans, specifications, documents or designs bear the name and address of the author and his occupation:
1. Single- and two-family homes, townhouses and multifamily dwellings, excluding electrical and mechanical systems, not exceeding three stories; or
 2. All farm structures used primarily in the production, handling or storage of agricultural products or implements, including, but not limited to, structures used for the handling, processing, housing or storage of crops, feeds, supplies, equipment, animals or poultry; or
 3. Buildings and structures classified with respect to use as business (Use Group B) and mercantile (Use Group M), as provided in the Uniform Statewide Building Code and churches with an occupant load of 100 or less, excluding electrical and mechanical systems, where such building or structure does not exceed 5,000 square feet in total net floor area, or three stories; or
 4. Buildings and structures classified with respect to use as factory and industrial (Use Group F) and storage (Use Group S) as provided in the Uniform Statewide Building Code, excluding electrical and mechanical systems, where such building or structure does not exceed 15,000 square feet in total net floor area, or three stories; or
 5. Additions, remodeling or interior design without a change in occupancy or occupancy load and without modification to the structural system or a change in access or exit patterns or increase in fire hazard; or
 6. Electric installations which comply with all applicable codes and which do not exceed 600 volts and 800 amps, where work is designed and performed under the direct supervision of a person licensed as a master's level electrician or

- Class A electrical contractor by written examination, and where such installation is not contained in any structure exceeding three stories or located in any of the following categories:
- a. Use Group A-1 theaters which exceed assembly of 100 persons;
 - b. Use Group A-4 except churches;
 - c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or
7. Plumbing and mechanical systems using packaged mechanical equipment, such as equipment of catalogued standard design which has been coordinated and tested by the manufacturer, which comply with all applicable codes. These mechanical systems shall not exceed gauge pressures of 125 pounds per square inch, other than refrigeration, or temperatures other than flue gas of 300° F (150 °C) where such work is designed and performed under the direct supervision of a person licensed as a master's level plumber, master's level heating, air conditioning and ventilating worker, or Class A contractor in those specialties by written examination. In addition, such installation may not be contained in any structure exceeding three stories or located in any structure which is defined as to its use in any of the following categories:
 - a. Use Group A-1 theaters which exceed assembly of 100 persons;
 - b. Use Group A-4 except churches;
 - c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or
 8. The preparation of shop drawings, field drawings and specifications for components by a contractor who will supervise the installation and where the shop drawings and specifications (i) will be reviewed by the licensed professional engineer or architect responsible for the project or (ii) are otherwise exempted; or
 9. Buildings, structures, or electrical and mechanical installations which are not otherwise exempted but which are of standard design, provided they bear the certification of a professional engineer or architect registered or licensed in another state, and provided that the design is adapted for the specific location and for conformity with local codes, ordinances and regulations, and is so certified by a professional engineer or architect licensed in Virginia; or
 10. Construction by a state agency or political subdivision not exceeding \$75,000 in value keyed to the January 1, 1991, Consumer Price Index (CPI) and not otherwise requiring a licensed architect, engineer, or land surveyor by an adopted code and maintenance by that state agency or political subdivision of water distribution, sewage collection, storm drainage systems, sidewalks, streets, curbs, gutters, culverts, and other facilities normally and customarily constructed and maintained by the public works department of the state agency or political subdivision.
 11. Conventional and alternative onsite sewage systems receiving residential wastewater, under the authority of Chapter 6 of Title 32.1, designed by a licensed onsite soil evaluator, which utilize packaged equipment, such as equipment of catalogued standard design that has been coordinated and tested by the manufacturer, and complies with all applicable codes, provided (i) the flow is less than 1,000 gallons per day; and (ii) if a pump is included, (a) it shall not include multiple downhill runs and must terminate at a positive elevational change; (b) the discharge end is open and not pressurized; (c) the static head does not exceed 50 feet; and (d) the force main length does not exceed 500 feet.
- B. No person shall be exempt from licensure as an architect or engineer who engages in the preparation of plans, specifications, documents or designs for:
 1. Any unique design of structural elements for floors, walls, roofs or foundations; or
 2. Any building or structure classified with respect to its use as high hazard (Use Group H).
 - C. Persons utilizing photogrammetric methods or similar remote sensing technology shall not be required to be licensed as a land surveyor pursuant to subsection B of § 54.1-404 or 54.1-406 to: (i) determine topography or contours, or to depict physical improvements, provided such maps or other documents shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination, or (ii) graphically show existing property lines and boundaries on maps or other documents provided such depicted property lines and boundaries shall only be used for general information.
- Any determination of topography or contours, or depiction of physical improvements, utilizing photogrammetric methods or similar remote sensing

technology by persons not licensed as a land surveyor pursuant to § 54.1-406 shall not show any property monumentation or property metes and bounds, nor provide any measurement showing the relationship of any physical improvements to any property line or boundary.

Any person not licensed pursuant to subsection B of § 54.1-404 or 54.1-406 preparing documentation pursuant to subsection C of § 54.1-402 shall note the following on such documentation: "Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination."

- D. Terms used in this section, and not otherwise defined in this chapter, shall have the meanings provided in the Uniform Statewide Building Code in effect on July 1, 1982, including any subsequent amendments.

§ 54.1-402.1. State and local government employees; license exemptions for persons employed prior to March 8, 1992.

Any person engaged in the practice of engineering, architecture, or land surveying as those terms are defined in § 54.1-400 as a regular, full-time, salaried employee of the Commonwealth or any political subdivision of the Commonwealth on March 8, 1992, who remains employed by any state agency or political subdivision shall be exempt until June 30, 2010, from the licensure requirements of § 54.1-406 provided the employee does not furnish advisory service for compensation to the public or as an independent contracting party in this Commonwealth or any political subdivision thereof in connection with engineering, architectural, or land surveying matters. The chief administrative officer of any agency of the Commonwealth or political subdivision thereof employing persons engaged in the practice of engineering, architecture, or land surveying as regular, full-time, salaried employees shall have the authority and responsibility to determine the engineering, architecture, and land surveying positions which have responsible charge of engineering, architectural, or land surveying decisions.

§ 54.1-410. Other building laws not affected; duties of public officials.

- A. Nothing contained in this chapter or in the regulations of the Board shall be construed to limit the authority of any public official authorized by law to approve plans, specifications or calculations in connection with improvements to real property. This shall include, but shall not be limited to, the authority of officials of local building departments as defined in § 36-97, to

require pursuant to the Uniform Statewide Building Code, state statutes, local ordinances, or code requirements that such work be prepared by a person licensed or certified pursuant to this chapter.

- B. Any public body authorized by law to require that plans, specifications or calculations be prepared in connection with improvements to real property shall establish a procedure to ensure that such plans, specifications or calculations be prepared by an architect, professional engineer, land surveyor or landscape architect licensed or authorized pursuant to this chapter in any case in which the exemptions contained in §§ 54.1-401, 54.1-402 or § 54.1-402.1 are not applicable.

Drafting of permits, reviewing of plans or inspection of facilities for compliance with an adopted code or standard by any public body or its designated agent shall not require the services of an architect, professional engineer, land surveyor or landscape architect licensed pursuant to this chapter.

TITLE 55 – PROPERTY AND CONVEYANCES

§ 55-70.1. Implied warranties on new homes.

- A. In every contract for the sale of a new dwelling, the vendor shall be held to warrant to the vendee that, at the time of the transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling with all its fixtures is, to the best of the actual knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to pass without objection in the trade.
- B. In addition, in every contract for the sale of a new dwelling, the vendor, if he is in the business of building or selling such dwellings, shall be held to warrant to the vendee that, at the time of transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling together with all its fixtures is sufficiently (i) free from structural defects, so as to pass without objection in the trade, (ii) constructed in a workmanlike manner, so as to pass without objection in the trade, and (iii) fit for habitation.
- C. The above warranties implied in the contract for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not in lieu of, any other express or implied warranties pertaining to the dwelling, its materials or fixtures. A contract for sale may waive, modify or exclude any or all express and implied warranties and sell a new home "as is" only if the words used to waive, modify or exclude such warranties are conspicuous (as defined by subdivision

(10) of § 8.1A-201), set forth on the face of such contract in capital letters which are at least two points larger than the other type in the contract and only if the words used to waive, modify or exclude the warranties state with specificity the warranty or warranties that are being waived, modified or excluded. If all warranties are waived or excluded, a contract must specifically set forth in capital letters which are at least two points larger than the other type in the contract that the dwelling is being sold "as is".

- D. If there is a breach of warranty under this section, the vendee, or his heirs or personal representatives in case of his death, shall have a cause of action against his vendor for damages; provided, however, for any defect discovered after July 1, 2002, such vendee shall first provide the vendor, by registered or certified mail at his last known address, a written notice stating the nature of the warranty claim. Such notice also may be hand delivered to the vendor with the vendee retaining a receipt of such hand delivered notice to the vendor or its authorized agent. After such notice, the vendor shall have a reasonable period of time, not to exceed six months, to cure the defect that is the subject of the warranty claim.
- E. The warranty shall extend for a period of one year from the date of transfer of record title or the vendee's taking possession, whichever occurs first, except that the warranty pursuant to subdivision (i) of subsection B for the foundation of new dwellings shall extend for a period of five years from the date of transfer of record title or the vendee's taking possession, whichever occurs first. Any action for its breach shall be brought within two years after the breach thereof. For all warranty claims arising on or after January 1, 2009, sending the notice required by subsection D shall toll the limitations period for six months.
- F. As used in this section, the term "new dwelling" shall mean a dwelling or house that has not previously been occupied for a period of more than 60 days by anyone other than the vendor or the vendee or that has not been occupied by the original vendor or subsequent vendor for a cumulative period of more than 12 months excluding dwellings constructed solely for lease. The term "new dwelling" shall not include a condominium or condominium units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title.
- G. The term "structural defects," as used in this section, shall mean a defect or defects that reduce the stability or safety of the structure below accepted standards or that restrict the normal use thereof.

In the case of new dwellings where fire-retardant treated plywood sheathing or other roof sheathing materials are used in lieu of fire-retardant treated plywood the vendor shall be deemed to have assigned the manufacturer's

warranty, at settlement, to the vendee. The vendee shall have a direct cause of action against the manufacturer of such roof sheathing for any breach of such warranty. To the extent any such manufacturer's warranty purports to limit the right of third parties or prohibit assignment, said provision shall be unenforceable and of no effect.

§ 55-248.13. Landlord to maintain fit premises.

- A. The landlord shall:
 - 1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
 - 2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
 - 3. Keep all common areas shared by two or more dwelling units of the premises in a clean and structurally safe condition;
 - 4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
 - 5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55-248.16;
 - 6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy of two or more dwelling units and arrange for the removal of same;
 - 7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and
 - 8. Maintain any carbon monoxide alarm that has been installed by the landlord in a dwelling unit.
- B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

- C. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision 1 of subsection A.
- D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions 3, 6, and 7 of subsection A and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

§ 55-248.16. Tenant to maintain dwelling unit.

- A. In addition to the provisions of the rental agreement, the tenant shall:
 - 1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
 - 2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
 - 3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and to promptly notify the landlord of the existence of any insects or pests;
 - 4. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § 55-248.13, if such disposal is on the premises;
 - 5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
 - 6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;
 - 7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;
 - 8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including

removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);

- 9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative;
- 10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;
- 11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;
- 12. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and
- 13. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17.
- B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1.

§ 55-248.18. Access; consent; correction of nonemergency conditions; relocation of tenant.

- A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the

tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant.

- B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, as selected by the landlord, and at no expense or cost to the tenant. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § 55-248.13; (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing herein shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing herein shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this section.

- C. The landlord has no other right to access except by court order or that permitted by §§ 55-248.32 and 55-248.33 or if the tenant has abandoned or surrendered the premises.
- D. The tenant may install, within the dwelling unit, new burglary prevention, including chain latch devices approved by the landlord, and fire detection devices,

that the tenant may believe necessary to ensure his safety, provided:

1. Installation does no permanent damage to any part of the dwelling unit.
2. A duplicate of all keys and instructions of how to operate all devices are given to the landlord.
3. Upon termination of the tenancy the tenant shall be responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of the tenant, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days of such request and may charge the tenant a reasonable fee to recover the costs of such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code.

TITLE 58.1 - TAXATION

§ 58.1-3661. Certified solar energy equipment, facilities or devices and certified recycling equipment, facilities or devices.

A. Certified solar energy equipment facilities or devices and certified recycling equipment, facilities, or devices, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real or personal property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation in the manner provided by subsection D.

B. As used in this section:

"Certified recycling equipment, facilities, or devices" means machinery and equipment which is certified by the Department of Waste Management as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units which manufacture, process, compound, or produce for sale recyclable items of tangible personal property at fixed locations in the Commonwealth.

"Certified solar energy equipment, facilities or devices" means any property, including real or personal property, equipment, facilities, or devices, certified by the local certifying authority to be designed and used primarily for the purpose of providing for the collection and use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require

a conventional source of energy such as petroleum products, natural gas, or electricity.

"Local certifying authority" means the local building departments or the Department of Waste Management. The State Board of Housing and Community Development shall promulgate regulations setting forth criteria for certifiable solar energy equipment. The Department of Waste Management shall promulgate regulations establishing criteria for recycling equipment, facilities, or devices.

C. Any person residing in a county, city or town which has adopted an ordinance pursuant to subsection A may proceed to have solar energy equipment, facilities or devices certified as exempt, wholly or partially, from taxation by applying to the local building department. If, after examination of such equipment, facility or device, the local building department determines that the unit primarily performs any of the functions set forth in subsection B and conforms to the requirements set by regulations of the Board of Housing and Community Development, such department shall approve and certify such application. The local department shall forthwith transmit to the local assessing officer those applications properly approved and certified by the local building department as meeting all requirements qualifying such equipment, facility or device for exemption from taxation. Any person aggrieved by a decision of the local building department may appeal such decision to the local board of building code appeals, which may affirm or reverse such decision.

D. Upon receipt of the certificate from the local building department or the Department of Waste Management the local assessing officer shall, if such local ordinance is in effect, proceed to determine the value of such qualifying solar energy equipment, facilities or devices or certified recycling equipment, facilities, or devices. The exemption provided by this section shall be determined by applying the local tax rate to the value of such equipment, facilities or devices and subtracting such amount, wholly or partially, either (i) from the total real property tax due on the real property to which such equipment, facilities, or devices are attached or (ii) if such equipment, facilities, or devices are taxable as machinery and tools under § 58.1-3507, from the total machinery and tools tax due on such equipment, facilities, or devices, at the election of the taxpayer. This exemption shall be effective beginning in the next succeeding tax year, and shall be permitted for a term of not less than five years. In the event the locality assesses real estate pursuant to § 58.1-3292, the exemption shall be first effective when such real estate is first assessed, but not prior to the date of such application for exemption.

E. It shall be presumed for purposes of the administration of ordinances pursuant to this section, and for no other purposes, that the value of such qualifying solar energy equipment, facilities and devices is not less than the normal cost of purchasing and installing such equipment, facilities and devices.

TITLE 63.2 - WELFARE (SOCIAL SERVICES)

§ 63.2-1705. Compliance with Uniform Statewide Building Code.

A. Buildings licensed as assisted living facilities, adult day care centers and child welfare agencies shall be classified by and meet the specifications for the proper Use Group as required by the *Virginia Uniform Statewide Building Code*.

Buildings used for assisted living facilities or adult day care centers shall be licensed for ambulatory or nonambulatory residents or participants. Ambulatory means the condition of a resident or participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the *Uniform Statewide Building Code* without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident or participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate. Nonambulatory means the condition of a resident or participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

STATE AGENCIES WITH FUNCTIONAL DESIGN RESPONSIBILITIES

Although the USBC supersedes building regulations of state agencies, § 36-98 of the Code of Virginia provides it shall not supersede state agency regulations, which require and govern the functional design and operation of building related activities not covered by the USBC. The building official may require building permit applicants to submit evidence of compliance with functional design requirements prior to issuance of a permit. Functional design activities include but are not limited to: public water supply systems, wastewater treatment and disposal systems, and solid waste facilities. State agencies may also require, when authorized by other state law, buildings be maintained in accordance with the USBC under which constructed.

The following list is intended as a guide to users of the USBC. In a few cases, a memorandum of agreement exists between DHCD or the BHCD and the affected state agency. An asterisk in the listing indicates an agreement exists and is contained in the documents or may be obtained from DHCD.

RELATED ACTIVITIES	PHONE	ADDRESS
*Adult homes and day care centers, child care facilities, assisted living facilities, group homes for children and family day care homes	(804) 726-7143	Division of Licensing Programs, DSS 801 E. Main St., 9 th Floor Richmond, VA 21219
Signs for outdoor advertising	(804) 371-6823	VDOT, Environmental Division 1401 E. Broad St. Richmond, VA 23219
Utilities affected by highway	(804) 786-2801	VDOT 1401 E. Broad St. Richmond, VA 23219
Driveways entering State highways, VDOT District Engineer at the following:		
870 Bonham Rd. Bristol, VA 24203 (276) 669-6151	731 Harrison Ave. Salem, VA 24153 (540) 387-5320	1601 Orange Rd. Culpeper, VA 22701 (540) 829-7537
4219 Campbell Ave. Lynchburg, VA 24506 (804) 947-6599	2430 Pine Forest Dr. Colonial Hts., VA 23834 (804) 524-6000	14685 Avion Parkway Chantilly, VA 20151 (703) 383-8368
		87 Deacon Rd. Fredericksburg, VA 22404 (540) 899-4560
Historic buildings and landmarks, preservation regulations	(804) 367-2323	Department of Historic Resources 2801 Kensington Avenue Richmond, VA 23221
Hospitals, hospices, and nursing homes	(804) 367-2102	Div. of Licensing and Certification, VDH 9960 Mayland Dr., Suite 401 Richmond, VA 23219
Hotels, motels, restaurants, camps, public swimming pools and tourist areas	(804) 864-7473	Office of Environmental Health, VDH 109 Governor Street Richmond, VA 23219
Mental health facilities (providing psychological care, drug, alcohol and mental treatment)	(804) 786-1747	Office of Licensing DBHDS 1220 Bank St., 4 th Floor Richmond, VA 23219
School buildings (public) and training schools for juveniles and adults	(804) 225-2035	Department of Education P. O. Box 2120 Richmond, VA 23218
*Sewage treatment, septic tanks and sanitation; * Waterworks and public water supply	(804) 864-7473	Office of Environmental Health, VDH 109 Governor St. Richmond, VA. 23219 or Local Public Health Office
Toilet facilities for construction workers; * Boilers and pressure vessels; Occupational safety	(804) 371-2327	Department of Labor and Industry 13 S. Thirteenth St. Richmond, VA 23219-1747
Architects & Engineers Asbestos & Lead based paint Contractors & Tradesman	(804) 367-8506	DPOR 9960 Mayland Dr., Suite 400 Richmond, VA 23233
Detention Facilities	(804) 674-3102	Dept. of Correction – Arch. And Eng. 6900 Atmore Drive Richmond, VA 23225
Meth Lab Cleanup See §§ 18.2-248 and 32.1-117 of the Code of Virginia Also see VHD Guidelines for Cleanup of Residential Property Used to Manufacture Methamphetamine	(804) 864-8182	Department of Health Office of Epidemiology, Toxicology 109 Governor Street, 6 th Floor East Richmond, VA 23219

PREVIOUS ADOPTIONS and AMENDMENTS of the USBC

The Virginia Uniform Statewide Building Code (USBC) was first adopted in 1973 by the State Board of Housing. Responsibility for the USBC passed to the State Board of Housing and Community Development on July 1, 1978. The initial adoption and subsequent amendments by these Boards are indicated below:

1973 Edition

Effective date: September 1, 1973
Title: Virginia Uniform Statewide Building Code, Administrative Amendments, 1973 Edition
Major reference standards:
BOCA Basic Building Code/1970, with 1972 Accumulative Supplement
BOCA Basic Mechanical Code/1971
BOCA Basic Plumbing Code/1970, with 1972 Accumulative Supplement
NFPA National Electrical Code/1971
One and Two Family Dwelling Code/1971

1974 Accumulative Supplement

Effective date: April 1, 1974
Title: 1974 Accumulative Supplement to Virginia Uniform Statewide Building Code
Major reference standards:
BOCA Basic Building Code/1970, with 1972 Accumulative Supplement
BOCA Basic Mechanical Code/1971
BOCA Basic Plumbing Code/1970, with 1972 Accumulative Supplement
NFPA National Electrical Code/1971

1975 Accumulative Supplement

Effective date: February 7, 1976
Title: 1975 Accumulative Supplement to Virginia Uniform Statewide Building Code
Major reference standards:
BOCA Basic Building Code/1975
BOCA Basic Mechanical Code/1975
BOCA Basic Plumbing Code/1975
NFPA National Electrical Code/1975
One and Two Family Dwelling Code/1975

1978 Accumulative Supplement

Effective date: August 1, 1978
Title: 1978 Accumulative Supplement to Virginia Uniform Statewide Building Code
Major reference standards:
BOCA Basic Building Code/1978
BOCA Basic Mechanical Code/1978
BOCA Basic Plumbing Code/1978
NFPA National Electrical Code/1978
One and Two Family Dwelling Code/1975

1978 Accumulative Supplement (First Amendment)

Effective date: January 1, 1981

NOTE: The 1978 Accumulative Supplement to the Virginia Uniform Statewide Building Code was continued, but with a few changes to the previously referenced BOCA Basic Building Code/1978.

1981 Edition

Effective date: July 16, 1982
Title: Virginia Uniform Statewide Building Code, 1981 Edition
Major reference standards:
BOCA Basic Building Code/1981
BOCA Basic Mechanical Code/1981
BOCA Basic Plumbing Code/1981
NFPA National Electrical Code/1981
One and Two Family Dwelling Code/1979 with 1980 Amendments

1981 Edition (First Amendment)

Effective date: June 20, 1984
Title: Sections 515.4 and 515.5 of Article 5 of the 1981 Edition, Virginia Uniform Statewide Building Code

1984 Edition

Effective date: April 1, 1986
Title: Virginia Uniform Statewide Building Code, Volume I - New Construction Code, 1984 Edition
Major reference standards:
BOCA Basic Building Code/1984
BOCA Basic Mechanical Code/1984
BOCA Basic Plumbing Code/1984
NFPA National Electrical Code/1984
One and Two Family Dwelling Code/1983 with 1984 Amendments

1987 Edition

Effective date: March 1, 1988
Title: Virginia Uniform Statewide Building Code, Volume I - New Construction Code, 1987 Edition
Major reference standards:
BOCA Basic Building Code/1987
BOCA Basic Mechanical Code/1987
BOCA Basic Plumbing Code/1987
NFPA National Electrical Code/1987
One and Two Family Dwelling Code/1986 with 1987 Amendments

1987 Edition (First Amendment)

Effective date: March 1, 1989
 Title: Virginia Uniform Statewide Building Code,
 Volume I - New Construction Code,
 1987 Edition
 Major reference standards:
 Same as 1987 Edition

1987 Edition (Second Amendment)

Effective date: March 1, 1990
 Title: Virginia Uniform Statewide Building
 Code, Volume I - New Construction Code,
 1987 Edition
 Major reference standards: Same as 1987 Edition

1987 Edition (Third Amendment)

Effective date: October 1, 1990
 Title: Virginia Uniform Statewide Building
 Code, Volume I - New Construction Code,
 1987 Edition
 Major reference standards: Same as 1987 Edition

1990 Edition

Effective date: March 1, 1991
 Title: Virginia Uniform Statewide Building
 Code, Volume I - New Construction Code,
 1990 Edition
 Major reference standards:
 BOCA National Building Code/1990
 BOCA National Mechanical Code/1990
 BOCA National Plumbing Code/1990
 NFPA National Electrical Code/1990
 CABO One & Two Family Dwelling
 Code/1989 with 1990
 Amendments

1990 Edition (First Amendment)

Effective date: November 1, 1991
 Title: Virginia Uniform Statewide Building
 Code, Volume I - New Construction Code,
 1990 Edition - First Amendment
 Major reference standards: Same as 1990
 Edition.

1990 Edition (Third Amendment)

Effective date: March 1, 1993
 Title: Virginia Uniform Statewide Building
 Code, Volume I - New Construction Code,
 1990 Edition - Third Amendment
 Major reference standards: Same as 1990 Edition

1993 Edition

Effective date: April 1, 1994
 Title: Virginia Uniform Statewide Building
 Code, Volume I - New Construction Code,
 1993 Edition
 Major reference standards:
 BOCA National Building Code/1993
 BOCA National Mechanical Code/1993
 BOCA National Plumbing Code/1993
 NFPA National Electrical Code/1993
 CABO One & Two Family Dwelling
 Code/1992 with 1993
 Amendments

1996 Edition

Effective date: April 15, 1997 with minor
 revision August 20, 1997
 Title: Virginia Uniform Statewide Building
 Code, 1996 Edition
 Major reference standards:
 BOCA National Building Code/1996
 International Mechanical Code/1996
 International Plumbing Code/1995 with
 1996 Supplement
 NFPA National Electrical Code/1996
 CABO One & Two Family Dwelling
 Code/1995

1996 Edition w/2000 Amendments

Effective date: September 15, 2000
 Title: Virginia Uniform Statewide Building
 Code, 1996 Edition with 2000
 Amendments
 Major reference standards:
 Same as 1996 edition except with
 1997 International Fuel Gas Code

2000 Edition

Effective date: October 1, 2003
 Title: Virginia Uniform Statewide Building Code
 "USBC" (2000 Edition)
 Major referenced standards:
 International Code Council (ICC)
 International Building Code 2000
 ICC International Plumbing Code 2000
 ICC International Mechanical Code 2000
 NFPA National Electrical Code 1999
 ICC International Fuel Gas Code 2000
 ICC International Energy Conservation
 Code 2000
 ICC International Residential Code (IRC)
 2000

NOTE: An amendment addressing the fire separation
 distance between dwellings under the IRC became
 effective on September 9, 2004.

2003 Edition

Effective date: November 16, 2005
 Title: Virginia Uniform Statewide Building Code
 "USBC" (2003 Edition)
 Major referenced standards:
 International Code Council (ICC)
 International Building Code 2003
 ICC International Plumbing Code 2003
 ICC International Mechanical Code 2003
 NFPA National Electrical Code 2005
 ICC International Fuel Gas Code 2003
 ICC International Energy Conservation
 Code 2003
 ICC International Residential Code (IRC)
 2003

2006 Edition

Effective date: May 1, 2008

Title: Virginia Uniform Statewide Building Code
“USBC” (2006 Edition)

Major referenced standards:

- ICC International Building Code 2006
- ICC International Plumbing Code 2006
- ICC International Mechanical Code 2006
- ICC National Electrical Code 2006
- ICC International Fuel Gas Code 2006
- ICC International Residential Code 2006

2009 Edition

Effective Date: March 1, 2011

Title: Virginia Uniform Statewide Building Code
“USBC” (2009 Edition)

Major referenced standards:

- ICC International Building Code 2009
- ICC International Plumbing Code 2009
- ICC International Mechanical Code 2009
- ICC National Electrical Code 2009
- ICC International Fuel Gas Code 2009
- ICC International Residential Code 2009



VIRGINIA BOILER AND PRESSURE VESSEL GUIDE*
2012 USBC Section 2801.1

OBJECT	APPLICATION	EXEMPTION
Boiler	Residence	All
Boiler	Apartment Building	Less than 4 units
Boiler	Heating/Process	None
Boiler	Hot Water Supply	Less than 120 gal./ 200,000 BTU/hr input
Water Heater	Hot Water Supply	Less than 120 gal/ 200,000 BTU/hr input
Pressure Vessel	Storage, Air	Less than 8 ft. ³ (60 gal.)/ 175 psi set pressure
Pressure Vessel	Potable Water	No steam coil/ Less than 300 psi
Pressure Vessel	Air & Water	Less than 120 gal.
Pressure Vessel	AC/Refrigeration	Less than 5ft. ³ /250 psi

* See Exemptions listed in § 40.1-51.8 of the Code of Virginia for the specific wording.

SWCB REGULATIONS ON TANKS

The USBC section on flammable and combustible liquids indicates that regulations governing the installation, repair, upgrade, and closure of underground and aboveground storage tanks under the Virginia State Water Control Board (SWCB) regulation(s) 9 VAC 25-580-10 et seq. and 9 VAC 25-91-10 et seq. are adopted and incorporated by reference to be an enforceable part of this code.

The purpose of these charts is for quick reference to determine when and how tanks are regulated by these SWCB regulations. Tanks exempt or excluded by SWCB regulations are not exempt from meeting USBC requirements.

CHART A - UNDERGROUND STORAGE TANKS (USTs)

A UST within any of the categories marked "YES" indicates that the SWCB regulations (<http://www.deq.virginia.gov/Portals/0/DEQ/Water/Guidance/012025.pdf>) contain requirements that the UST must comply with. Regulations do not apply to underground storage tanks that are not part of the definition, or are excluded by the regulations. In certain instances UST's may be partially regulated. The SWCB regulations define an UST as any one or a combination of tanks (including underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including underground pipes) is 10% or more below the surface of the ground.

BRIEF DESCRIPTION	UST REG APPLY
UST Technical Regulations (9 VAC 25-580-10 et seq.) address "regulated substances" that is defined in Article 9 of the State Water Control Law to mean any one of the following: ^a <ul style="list-style-type: none"> a.) Any substance listed in §101(14) of CERCLA (42 USC § 9601 <i>et seq.</i>) Available on the Web at: http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap103-subchapI-sec9601.pdf; b.) Petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 psia); or c.) Petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through a process of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. 	YES
Any UST ≤ 110 gallons	NO
Farm or residential tank ≤ 1,100 gallons used for storing motor fuel for noncommercial purposes	NO
All underground tanks used for storing heating oil for consumption on the premises where stored	NO
Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes ^b	NO
Tanks used for storing heating oil for consumption on the premises where stored ^b	NO
Septic tanks ^b	NO
Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline ^b	NO
Surface impoundment, pit, pond, or lagoon ^b	NO
Storm water or wastewater collection systems ^b	NO
Flow-through process tank ^b	NO
Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations ^b	NO
Storage tank situated in an underground area (such as a basement, cellar, mine-working, drift,	NO

shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor is regulated as an AST ^b	
UST systems holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances	NO
Wastewater treatment tank system that is part of a wastewater treatment facility regulated under §402 or §307(b) of the Clean Water Act; Equipment of machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks	NO
Any UST system whose capacity is 110 gallons or less	NO
UST systems containing de minimis concentration of regulated substances	NO
Emergency spill or overflow containment UST system that is expeditiously emptied after use	NO
Wastewater treatment tank systems	(YES) ^c
UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954	(YES) ^c
UST systems that are part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A	(YES) ^c
Airport hydrant fuel distribution systems	(YES) ^c
UST systems with field-constructed tanks	(YES) ^c
Release detection for any UST system that stores fuel solely for use by emergency power generators	(YES) ^c

Note a. Wording has been abbreviated. For complete definition see “regulated substance” in 9 VAC 25-580-10.

Note b. Includes pipes connected to any of these tanks.

Note c. In certain instances UST’s may be partially regulated.

CHART B - ABOVEGROUND STORAGE TANKS (ASTs)

An AST within any of the categories marked "YES" indicates that the SWCB regulations (<http://www.deq.virginia.gov/Portals/0/DEQ/Water/Guidance/012025.pdf>) contain requirements that the AST must comply with. Regulations do not apply to aboveground storage tanks that are not part of the definition(s), or are excluded by the regulations. In certain instances AST's may be partially excluded by the regulations.

BRIEF DESCRIPTION ^e	AST REG APPLY
<p>AST Technical Regulations (9 VAC 25-91-10 et seq.) address tanks and connected piping containing "oil" at atmospheric pressure. "Oil" as defined means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity.</p> <p>Unless otherwise specified, regulations contain requirements for an individual AST with storage capacity greater than 660 gallons of oil. Applicability of each of the part(s) of the SWCB regulation are identified within the regulation (e.g., Pollution prevention requirements does not apply for facilities with an AST storage capacity of < 25000 gallons but ASTs must be registered with DEQ).</p> <p>The term "pipes" or "piping" includes piping and associated piping utilized in the operation of an AST, or emanating from or feeding ASTs or transfers oil from or to an AST(e.g., dispensing systems, including airport hydrant fueling systems, supply systems, gauging systems, auxiliary systems, etc.).</p>	YES
An AST ≤ 660 gallons of oil	NO
An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregate storage capacity ≤ 1,100 gallons	NO
An AST storing heating oil > 660 gallons for consumption on premises where stored (must be registered with DEQ)	(YES) ^a
An AST > 660 gallons storing asphalt or asphalt compounds that are liquid (60°F at 14.7 psia)	(YES) ^b
An AST used to store propane gas, butane gas or other liquid petroleum gases	NO
An AST regulated by Depart. of Mines, Minerals and Energy (Chap 22.1, § 45.1-361.1) COV	NO
AST used less than 120 days when: used in containment & cleanup; used by a federal, state or local entity in responding to an emergency; or used temporarily to replace permanent storage	NO
Licensed motor vehicles, unless used solely for the storage of oil	NO
Pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 <i>et seq.</i>)	NO
Flow-through process tanks as defined in 40 CFR Part 280	NO
Vessels ^c	NO
Motor vehicles, unless used solely for the storage of oil ^c	NO
An AST with a storage capacity of 660 gallons or less of oil ^c	NO
An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60 ⁰ F at 14.7 psia) subject to and specifically listed or designated as a hazardous substance under the federal CERCLA ^c	NO
A wastewater treatment tank system that is part of a wastewater treatment facility regulated under the federal Clean Water Act ^c	NO
An AST that is regulated by the Depart. of Mines, Minerals and Energy under Chapter 22.1 (§ 45.1-361.1 <i>et seq.</i>) of the Code of VA ^c	NO
An AST used for the storage of products that are regulated pursuant to the federal Food, Drug, and Cosmetic Act ^c	NO
An AST that is used to store hazardous wastes listed or identified under Subtitle C of the RCRA (Solid Waste Disposal Act), or a mixture of such hazardous wastes and other regulated substances ^c	NO
An AST that is used to store propane gas, butane gas or other liquid petroleum gases ^c	NO
An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils ^c	NO

A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations ^c	NO
A surface impoundment, pit, pond, or lagoon ^c	NO
A stormwater or wastewater collection system ^c	NO
Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems ^c	NO
An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and cleanup of oil; (ii) used by a federal, state or local entity in responding to an emergency; or (iii) used temporarily on-site to replace permanent capacity storage ^c	NO
Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors ^c	NO
A flow-through process tank ^c	NO
Oily water separators ^c	NO
An AST containing dredge spoils ^c	NO
An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregate storage capacity of 1,100 gallons or less ^c	NO
Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment ^c	NO

Note a. At facilities with an aggregate AST storage capacity of 25000 gallons or greater of oil, an AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored is excluded from complying with Pollution Prevention Requirements (9 VAC 25-91-130 et seq.) but AST must be registered with DEQ.

Note b. Partial exclusions from portions of AST regulations for certain asphalt and asphalt compounds and for certain line pipe and breakout tanks of an interstate pipeline are identified in AST regulations.

Note c. Wording has been abbreviated. For complete wording, see AST regulations.

CHART C - PARTIAL LIST OF KEY DIFFERENCES^{a, b, c} ICC CODES vs SWCB REGULATIONS

The USBC section on flammable and combustible liquids indicates where differences occur between the provisions of this code and the incorporated provisions of the SWCB regulations, the provisions of the SWCB regulations shall apply. The purpose of this Chart is to identify a partial list of key differences.

SWCB Regulation Requirements UST = 9 VAC 25-580-10 et seq. AST = 9 VAC 25-91-10 et seq.	ICC 2009 Building/Fire Applicable Codes and/or Referenced Standards	Key Differences Noted
9 VAC 25-580-10 - Definition of UST- The definition of UST in SWCB UST regulations only requires 10% of tank & pipe to be underground to be a UST.	NFPA 30 requires tank to be completely covered to be an UST.	This is not considered a conflict since SWCB regulations indicate their definitions have meanings when used in their chapter. Therefore, use SWCB definition in applying their tank regulations and NFPA 30 requirements in applying building or fire code requirements.

<p>9 VAC 25-580-310 – UST Temporary Closure</p> <p>Note: For AST, see footnote c</p>	<p>IFC 2009 Section 3404.2.13.1.3 - UST out of use for 1 yr. requires: "Removal or Abandonment in Place (which is considered permanent closure by SWCB regulations)"</p>	<p>* For upgraded systems: SWCB regulation provides for UST temporary closure indefinitely for upgraded systems and therefore SWCB does not require removal or abandonment in place. * For substandard systems: SWCB regulation provides for extensions of UST temporary closure, at the option of the building official. DEQ policy recommended all substandard UST systems temporarily closed for the 12/22/98 deadline be permanently closed by 12/22/99. ** Therefore, SWCB regulations govern.</p>
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Note a: Tanks exempt or excluded by SWCB regulations are not exempt from meeting USBC requirements. For example, SWCB regulations exclude all USTs with heating oil consumed on premises stored, but USBC still has requirements for permits, installation, repairs, abandonment, removal, etc; and IRC has requirements for permits, installation, etc.

Note b: Tank closure per IRC: IRC, Chapter 22, has requirements for installation, but has no requirements for tank closure. The owner would still have to comply with SWCB regulations for tank closure on tanks not excluded from SWCB regulations.

Note c: Even though SWCB regulations do not address temporary closures of ASTs, the ICC out of service requirements in IFC Section 3404.2.13.2 shall apply.

VIRGINIA ADMINISTRATIVE CODE

SOLAR ENERGY CRITERIA FOR TAX EXEMPTION

Part I Administration

13VAC5-200-10. Application.

Application for solar equipment tax exemption must be made to the local building department.

13VAC5-200-20. Plans and Specifications.

Complete plans and specifications of the solar energy equipment, facilities or devices must be submitted to the local building department for review.

13VAC5-200-30. Conformance.

The solar energy system must conform to the provisions of the Virginia Uniform Statewide Building Code.

13VAC5-200-40. Approval.

The applicant for tax exemption must demonstrate to the local building official that the proposed or existing solar system performs its intended function.

13VAC5-200-50. Certification.

If, after examination of such equipment, facility or device the local building department determines that the unit is designed and used primarily for the purpose of providing for the collection and use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require a conventional source of energy, and conforms to the criteria set forth in this document, the local building department shall approve and certify such application. The local department shall forthwith transmit to the local assessing officer those applications properly approved and certified by the local building department as meeting all requirements qualifying such equipment, facility or device for exemption from taxation.

13VAC5-200-60. Appeals.

Any person aggrieved by a decision of the local building department may appeal such decision to the local board of building code appeals, which may affirm or reverse such decision.

13VAC5-200-70. Assessment.

Upon receipt of the certificate from the local building department the local assessing officer shall, if such local ordinance be in effect, proceed to determine the value of such qualifying solar energy equipment, facilities or devices. The value of such qualifying solar energy equipment, facilities or

devices shall not be less than the normal cost of purchasing and installing such equipment, facilities or devices.

13VAC5-200-80. Exemption.

The tax exemption shall be determined in accordance with § 58.1-3661 D of the Code of Virginia.

**Part II
Definition**

13VAC5-200-90. Solar energy equipment.

The purpose of this section is to define solar energy equipment in terms of its function, operation and components for the purpose of determining eligibility for personal or real property tax exemption. This section describes the majority of solar energy systems that are widely used today. This definition is not meant to be all inclusive and some solar energy systems may not be represented. Photovoltaic solar cells are not included in this section but do qualify as solar energy equipment. Any solar energy system submitted for tax exemption that is not covered in this document will be considered on an individual basis for certification by the State Office of Housing.

13VAC5-200-100. Functional description.

Solar heating and hot water system functional description is contained in HUD Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Systems, NBSIR #77-1226.

**Part III
Passive Solar Energy System**

13VAC5-200-110. Passive solar energy system defined.

An assembly of natural and architectural components including collectors, thermal storage device or devices and transfer medium which converts solar energy into thermal energy in a controlled manner and in which no fans or pumps are necessary to accomplish the transfer of thermal energy. Fans may be used to assist the natural convective air flow in a passive air heating system. The prime element in a passive solar system is usually some form of thermal capacitance.

13VAC5-200-120. South facing windows used as solar collectors.

Glazing material used in windows on the designated solar surface of south facing walls when it is part of a sun tempered design for the purpose of collecting direct solar heat in the cold season shall be considered solar equipment eligible for tax exemption. The area of south facing glazing considered to be solar energy equipment eligible for tax exemption shall be calculated as follows:

$$X - Y = Z$$

"X" - Percentage of glazing contained within the designated solar surface of the south facing wall in respect to the area of that wall.

"Y" - Percentage of glazing on nonsolar surfaces (north, east, west walls, and non-solar south walls) in respect to the area of those walls.

"Z" - Percentage of glazing considered to be solar equipment.

The percentage of glazing considered to be solar equipment (Z), is then multiplied by the total invoice cost of the glazing used on only the designated solar surfaces of the south facing walls. The product of these calculations will be the dollar value of glass to be considered as "equipment" in calculating the solar exemption.

Wall heights used in the above calculations shall be considered the distance parallel to the wall from finished floor level to finished ceiling level.

EXAMPLE: A residence is constructed with fifteen percent (15%) of the north, east and west walls consisting of glass. The south wall, however, is eighty-five percent (85%) glass. The total cost of the glass used on the south wall was one thousand (\$1,000) dollars. To determine the percentage of that cost which is eligible for solar tax exemption, you would perform the following calculations:

$$85\% - 15\% = 70\%$$

$$.70 \times \$1,000 = \$700$$

$$(70\% \text{ of } \$1,000 = \$700)$$

13VAC5-200-130. Trombe walls.

The Trombe Wall is a south facing wall of the building envelope composed of a mass wall and exterior glazing. The mass wall functions as a combination heat sink and exterior wall, while the glazing creates a "heat trap" for penetrating solar radiation.

Trombe walls shall be considered solar equipment and all equipment used in the Trombe Wall, such as but not limited to vents, fans, movable insulation, controls, mass wall, glazing, shading devices and any other equipment peculiar to the solar system shall be eligible for tax exemption.

13VAC5-200-140. Greenhouses.

Glass, fiberglass, or other glazing materials, framing members, and foundations used to enclose south facing areas such as patios, atriums, or greenhouses for purposes of entrapping solar heated air shall be considered solar energy equipment, provided that the warm air be circulated through the principal structure by use of a permanently installed air movement system (forced or convective) and that adequate provisions have been made to prevent nocturnal heat losses and cold weather heat losses through use of insulating devices. Fifty percent (50%) of the invoice cost of labor and materials used in constructing a greenhouse or similar type structure, are to be considered solar heating equipment. The greenhouse is serving two purposes: (1) that of a solar collector, and (2) as a means of growing flowers or other plants. Equipment such as ductwork and fans used in circulating solar heated air accumulated within enclosed south facing areas such as patios, atriums, or greenhouses shall be considered solar energy equipment up to the point where such a system is integrated with a conventional heating system. Full credit will be allowed for movable insulation used to reduce nocturnal and cold weather heat losses.

EXAMPLE: Mr. Jones enclosed his south facing patio with fiberglass panels and movable insulation for the purpose of entrapping warm air which accumulates beneath the glazing. The warm air is then circulated through the residence using permanently installed ductwork and fans independent of his conventional heating and cooling system. The fiberglass, movable insulation, fans and ductwork Mr. Jones used in his solar heating system are considered solar equipment and eligible for tax exemption.

13VAC5-200-150. Thermal storage.

Devices constructed for the primary purpose of storing thermal energy collected and converted by a solar heating system shall be considered solar energy equipment. In passive solar heating systems the thermal storage is often incorporated into the building envelope in the form of thick concrete slab floors or masonry walls insulated on the exterior of the structure. If the thermal storage is serving a dual function as floor or wall of the structure, fifty percent (50%) of the cost of the floor or wall shall be considered solar energy equipment and eligible for tax exemption.

13VAC5-200-160. Movable insulation.

Movable insulation used to minimize heat loss largely caused by nocturnal radiation through areas used for direct solar heat gain during the daylight hours shall be considered solar energy equipment.

13VAC5-200-170. Shading device.

Any device designed primarily for shading a window or solar collector to prevent solar heat gain during the summer season shall be considered solar energy equipment.

MEMORANDUM OF AGREEMENT
between the Board of Housing and Community Development
and the Virginia Department of Labor and Industry

(Revised December, 2013)

In accordance with Sections 36-98 et seq. and 40.1-51.6 et seq. of the Code of Virginia, the Virginia Department at Labor and industry (hereinafter referred to as the "Department") and the Board of Housing and Community Development (hereinafter referred to as the "Board") agree to coordinate the Virginia Uniform Statewide Building Code (hereinafter referred to as the "Code") and the Boiler and Pressure Vessel Safety Regulations (hereinafter referred to as the "Regulations"). The parties agree to the following:

1. That enforcement of the Code is the responsibility of the local building department, and that enforcement of the Regulations is the responsibility of the Department.
2. That this agreement covers boilers and water heaters except:
 - A Boilers used in private residences or apartment houses of less than four apartments.
 - B. Hot water supply boilers and water heaters when the following limitations are not exceeded:
 - a) heat input of 200,000 BTU per hour
 - b) water temperature of 210 Fahrenheit
 - c) water-containing capacity of 120 gallons
3. That the local building department shall notify, on a quarterly basis in writing (600 E. Main Street, Suite 207, Richmond, VA 23219) or by email, the chief boiler inspector when building, mechanical or plumbing permits are issued for any boiler or water heater that is subject to the Department's inspection.
4. That inspection and certification of boilers shall be the responsibility of the Department; however, the Department may authorize and accept inspection reports from approved special inspectors and owner-user inspection agencies in accordance with sections 40.1-51.9 and 40.1-51.11:1 of the Code of Virginia.
5. That the Department shall assure new and existing boilers and water heaters are in compliance with the Regulations.
6. That the local building department shall accept the inspection certificate of compliance from the Department as evidence of compliance with the Regulations.
7. That appropriate amendments, additions, or deletions will be made to the Regulation and to the Code to insure that there is no jurisdictional conflict between the two documents.

8. That it is the intention of both the Board and the Department to cooperate with each other in resolving any technical conflicts between the Regulations and the Code, and in developing and implementing operational procedures to insure and promote a constructive working relationship between building officials and boiler inspectors.
9. That, except in matters of imminent danger to public health or safety, whenever conflicts or disagreements arise between the two agencies or their staffs or localities, all appropriate regulatory procedures will be exhausted prior to any judicial action. That the local building official may require appropriate corrective actions in accordance with the Code, where unsafe conditions exist and there is an imminent danger to the public health or safety.
10. That this Agreement may be amended or terminated by mutual consent of the parties.

The undersigned agree to the conditions of the Agreement,



William C. Shelton
Director, Department of Housing
And Community Development

12/10/13
Date



Bill Burge
Acting Commissioner, Department of
Labor and Industry

12/18/13
Date

MEMORANDUM OF AGREEMENT

Virginia Department of Housing and Community Development
and
Virginia Department of Environmental Quality

In accordance with § 10.1-1186 and § 36-139 of the *Code of Virginia*, the Virginia Department of Housing and Community Development (“DHCD”) and the Virginia Department of Environmental Quality (“DEQ”) on this day, June 21, 2013, agree to coordinate jurisdictional responsibilities of the *Virginia Uniform Statewide Building Code* (13 VAC 5-63, the “Code”), the *Sewage Collection and Treatment Regulations* (9 VAC 25-790, the “SCAT Regulations”) and the *Water Reclamation and Reuse Regulation* (9 VAC 25-740, the “WR&R Regulation”).

The parties agree as follows:

1. Codes and Regulations

- A. Adoption and promulgation of the Code is the responsibility of DHCD;
- B. Enforcement of the Code is the responsibility of the local building department; and
- C. Adoption, promulgation, administration and enforcement of the SCAT Regulations and the WR&R Regulation is the responsibility of DEQ.

2. Sewage Collection, Treatment and Handling Equipment and Equipment for Water Reclamation and Reclaimed Water Distribution and Storage

- A. DEQ is charged with issuing construction and operation certificates for municipal sewage collection systems and treatment works and water reclamation systems, including satellite reclamation systems. Whenever components of sewage collection systems and/or treatment works, or water reclamation systems, reclaimed water distribution systems or reclaimed water storage that involve the production or management of reclaimed water prior to “ready-for-reuse,” as defined in 4(A) of this agreement, are located in a building or similar structure, the SCAT Regulations and/or the WR&R Regulation, as determined by DEQ, shall apply to the design, construction, operation and maintenance of all such components, and the Code shall apply to the building or structure and all of its incidental utilities (e.g., heating, electrical, house plumbing, etc.).
- B. No county, city, town or employee thereof, shall issue a permit (building permit) for a building designed for human occupancy without first obtaining the prior notification from DEQ that safe, adequate and proper sewage treatment is, or will be made available to such building. DEQ shall notify the local building official when a permit and certificates to construct and operate have been issued to a sewage treatment works or pump station in accordance with the SCAT Regulations. It is noted that the Virginia Department of Health is responsible for issuing construction and operation permits for sewage treatment systems of single family homes.

3. Building Sewers

- A. Where the wastewater from the building or structure flows by gravity to the building sewer, which is or will be connected to a public or private gravity sewer, the jurisdiction of the Code shall apply to the building drain, building sewer, and all other appurtenances up to the point of connection to the public or private gravity sewer.
- B. Where the wastewater from a building or structure is pumped to a public or private gravity sewer (regardless of its location inside or outside of a building) and
 - 1) the total daily flow is less than 2,000 gallons per day, the jurisdiction of the Code shall apply.
 - 2) the total daily flow is greater than or equal to 2,000 gallons per day, the jurisdiction of the SCAT Regulations shall apply.
- C. Where the wastewater from a building or structure is pumped to a pressurized force main, the jurisdiction of the SCAT Regulations shall apply.
- D. Where the wastewater from a building or structure is transferred via a vacuum system to a public or private sewer system, the jurisdiction of the SCAT Regulations shall apply.

4. Distribution Piping and Storage Tanks for Reclaimed Water Ready-for-Reuse

- A. For the purposes of this agreement, reclaimed water ready-for-reuse is reclaimed water that has received the required treatment and meets appropriate standards for the intended reuses of that water in accordance with the WR&R Regulation and is available for reuse(s) by an end user either downstream of a connection to centralized reclaimed water service or at sites under the ownership or management of the end user where the end user is also the generator and/or distributor of the reclaimed water reused on site.
- B. Where distribution piping and/or storage tanks for reclaimed water ready-for-reuse are located outside of a building or buildings and are used to deliver the reclaimed water for reuse in a building or buildings, the Code shall apply to such piping and/or storage tanks on the same lot as the building or buildings.
- C. Where distribution piping and/or storage tanks for reclaimed water ready-for-reuse are used for purposes other than to deliver reclaimed water for reuse in a building or buildings, the WR&R Regulation shall apply to such distribution piping and/or storage tanks.
- D. Where distribution piping and/or storage tanks for reclaimed water ready-for-reuse are located inside a building and are used to deliver or distribute the reclaimed water for reuse in that building or for reuse in another building on the same lot, the Code shall apply to such distribution piping and/or storage tanks.
- E. The WR&R Regulation may also be applicable through service agreements or contracts between the end user and the provider of reclaimed water.

5. General Agreements

- A. It is the intention of both DHCD and DEQ to cooperate with each other in resolving any technical conflicts between the SCAT Regulations, the WR&R Regulation and the Code and in developing and implementing operational procedures to ensure and promote a constructive working relationship between local building officials, DHCD and DEQ.
- B. When practical, the Code will include a clear reference to the jurisdiction of the SCAT Regulations and the WR&R Regulation and these regulations, in turn, will include clear references to the jurisdiction of the Code.
- C. Appropriate amendments, additions, or deletions will be made to the SCAT Regulations, the WR&R Regulation and the Code, when practical, to ensure that there is no jurisdictional conflict between the regulations and the Code.
- D. Except in matters of imminent danger to public health or safety, whenever conflicts or disagreements arise between the two agencies or their staff, all appropriate regulatory procedures will be exhausted prior to any judicial action.
- E. This Agreement may be amended or terminated by mutual consent of the parties.

The undersigned agree to the Conditions of this Agreement.



William C. Shelton, Director
Department of Housing and Community
Development



David K. Paylor, Director
Department of Environmental Quality

MEMORANDUM OF AGREEMENT

June 14, 2013

Between the Virginia Department of Housing and Community Development (VDHCD)
and the Virginia Department of Health (VDH)

In accordance with Va. Code §§ 36-98 et seq., 32.1-12, and 32.1-163 et seq., the VDH and the VDHCD agree to coordinate jurisdictional responsibilities through the Virginia Uniform Statewide Building Code (13 VAC 5-62, the "building code") and applicable VDH regulations ("VDH regulations")¹ as follows:

Codes and Regulations: Adoption and Enforcement

1. VDHCD adopts and promulgates the building code. The local building department enforces the building code.
2. The Board of Health adopts and promulgates VDH regulations. The Board of Health and VDH jointly enforce VDH regulations.

Definitions:

"Alternative Discharging System" means a treatment works that requires a permit from VDH pursuant to 12 VAC5-640.

"Onsite Sewage System" means a conventional or alternative onsite sewage system as defined in Va. Code 32.1-163, which requires a permit from VDH pursuant to 12 VAC5-610 or 12 VAC5-613.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

"Graywater system" means treatment works that disperses untreated wastewater from bathtubs, showers, lavatory fixtures, wash basins, washing machines, and laundry tubs. A graywater system does not include wastewater from toilets, urinals, kitchen sinks, dishwashers, or laundry water from soiled diapers.

Treatment works applicability

1. The VDHCD and VDH agree on the following interpretation of their relevant regulations: The building code will apply to all internal service plumbing components of a treatment works up to the point of connection of the building drain to the building sewer.

¹ VDH implements the Sewage Handling and Disposal Regulations (12 VAC 5-610); Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12 VAC 5-640); Regulations for Alternative Onsite Sewage systems (12 VAC5-613); Private Well Regulations (12 VAC5-630)

2. The building code will apply to electrical and structural components of a treatment works, except as provided below.
 - a. The VDH regulations will apply to control panels for the treatment works and its functional treatment components, including electrical devices for pump stations, master disconnect switches, manual override switches, motor control panels, and separate motor control centers when specified by the designer or required by VDH.
 - b. VDH regulations and policies do not consider cord and plug connections associated with a treatment works. If allowed by the building code, cord and plug connections for the treatment works must be located in a weather proof box when outside of the wet well to prevent exposure to weather conditions.
3. The VDH regulations will apply to the treatment and functional components of a treatment works regardless of location (inside or outside of the building or structure), except as provided below.
 - a. The building code will apply to graywater systems not regulated by VDH, such as building or structures connected to a public sewer system.
4. The VDH regulations will apply to components of a treatment works that are external to the building or structure. External components include the septic tank, pump station, distribution box or mechanism, piping, or additional treatment devices such as blowers and associated electrical devices.

Reviews pursuant to Va. Code § 32.1-165

The VDHCD and VDH commit to ensure no county, city, town or employee thereof shall issue a building permit for the construction of a new building designed for human occupancy without the prior written notification of the State Health Commissioner or agent that safe, adequate, and proper sewage treatment is or will be made available to such building.

1. VDH approves a treatment works three ways; by issuing: (1) a certification letter that recognizes a treatment works can be designed sometime in the future, which does not expire; (2) a subdivision letter that describes future treatment works for each subdivision lot, which also does not expire; or (3) a construction permit, which describes the actual construction of the treatment works and is valid for 18 months with one 18 month renewal under certain conditions.
2. Pursuant to Va. Code § 32.1-165, the local building official may use the certification letter, subdivision letter, or construction permit to issue a building permit. The local building official understands that a treatment works cannot be constructed until the local health department issues a construction permit. The footprint of the building or structure cannot interfere with the setbacks required by the VDH regulations.

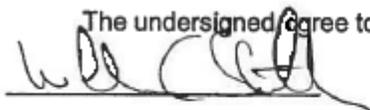
3. Pursuant to Va. Code § 32.1-165, the local building official will contact the local health department as provided by local and routine processes, which might differ in various jurisdictions, upon finding that issuance of the building permit might have an impact on the function of an existing treatment works already installed. If VDH requests an application for review of the installed treatment works, then the application must be completed before VDH can determine whether the treatment works is acceptable.
 - a. If the wastewater flow, capacity, or effluent strength increases for the existing treatment works, then Pursuant to Va. Code § 32.1-165, the building official must rely on a valid construction permit from VDH before issuing the building permit. A certification letter or subdivision approval will not be sufficient.
4. VDH will only approve a treatment works if it complies with VDH regulations and associated policies. VDH will notify the local building official as soon as practical whether a treatment works was installed correctly by issuance of an operation permit. Pursuant to Va. Code § 32.1-165, the local building official will not issue a certificate of occupancy until after VDH has issued the operation permit.

Conflict Resolution

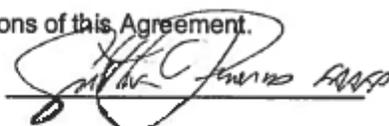
Both VDH and DHCD will cooperate in resolving any technical conflicts between VDH regulations and the building code. The agencies will develop and implement procedures as needed to ensure collaboration between local building officials and local health departments. Appropriate amendments, edits, additions, or deletions will be made to the VDH regulations and the building code when necessary. This MOA is a statement of the intentions of VHDCD and VDH to coordinate their efforts in order to carry out their statutory duties. It is not a contract and it is not enforceable in any judicial or administrative forum: it does not create any rights or duties of any third party. It does not purport to modify the statutory duty of either signatory agency.

This Agreement is effective as of the date written above and is in effect until terminated either by mutual written consent of the parties or by one signatory party with 60 days' written notice to the other party. This Agreement may be amended by mutual written consent of the parties.

The undersigned agree to the Conditions of this Agreement.



William, C. Shelton, Director
Department of Housing and
Community Development



Cynthia Romero, MD, FAAFP
State Health Commissioner
Department of Health

MEMORANDUM OF UNDERSTANDING
between the
Department of Housing and Community Development
and the
Virginia Department of Health

December 2013

In accordance with § 36-97 *et seq.* and § 32.1-167 *et. seq.* of the *Code of Virginia*, the Virginia Department of Health (hereafter referred to as the "VDH") and the Virginia Department of Housing and Community Development (hereafter referred to as the "DHCD") agree to coordinate the Uniform Statewide Building Code (hereafter referred to as the "USBC") and the Virginia *Waterworks Regulations* (hereafter referred to as the "*Regulations*"). The USBC shall not supersede the *Regulations* as stated in § 36-98 of the *Code of Virginia*. The parties agree to the following.

1. Adoption and promulgation of the USBC is the responsibility of the DHCD; enforcement of the USBC is the responsibility of the local building department; and that adoption, promulgation, and enforcement of the *Regulations* is the responsibility of the VDH.
2. The jurisdiction of the USBC includes all buildings, structures, and equipment (as defined in § 36-97 of the *Code of Virginia*) up to the point of connection to the water meter; and that the jurisdiction of the *Regulations* includes the meter, all waterworks' mains, treatment facilities, and raw water collection and transmission facilities. Where no meter is installed, the point of demarcation between the jurisdiction of the USBC and of the *Regulations* is the point of connection to the waterworks main; or, in the case of an owner of both waterworks and the building served, the point of demarcation is the point of entry into the building.

Exception: Whenever a building or structure is utilized to house portions of a waterworks, as determined by the VDH, the *Regulations* shall apply to all such water treatment, storage, and pumping facilities and the USBC shall apply to the building, structure, and equipment as defined in § 36-97 of the *Code of Virginia*.

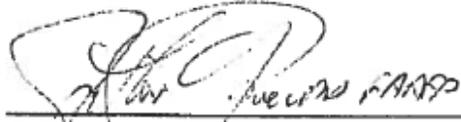
3. Both the USBC and the *Regulations* will include a clear reference to jurisdiction of the other document.
4. The *Regulations* will require each waterworks owner to have a cross-connection control and backflow prevention program consistent with the *Regulations*. The *Regulations* will require, as a minimum, an approved containment device at each service connection consistent with any existing or potential health, pollution, or system hazard to the waterworks. In lieu of such containment devices, point-of-use isolation protection devices shall be permitted to be installed; shall comply with the provisions of the USBC; and, shall be deemed to be in compliance with the *Regulations*.
5. The building official is required by the USBC to be assured that the water supply to a building is safe and of adequate capacity before issuing a building permit. Building permits involving a new water connection or extension of an existing connection to a waterworks main shall not be issued when the VDH has notified the building official in writing that the waterworks is unsafe or at or above its permitted capacity.

6. Appropriate amendments, additions, or deletions will be made to the Regulations and to the USBC to insure that there is no jurisdictional conflict between the two documents.
7. It is the intention of both the DHCD and the VDH to cooperate with each other in resolving any technical conflicts between the Regulations and the USBC, and in developing and implementing operational procedures to ensure and promote a constructive working relationship between building and health officials.
8. Except in matters of imminent danger to public health or safety, whenever conflicts or disagreements arise between the two agencies or their staffs, all appropriate regulatory procedures will be exhausted prior to any judicial action.
9. This Understanding may be amended or terminated by mutual consent of the parties.

The undersigned agree to the conditions of this Agreement.



William C. Shelton, Director
Virginia Department of Housing and
Community Development



Cynthia Romero, MD, FAAFP
State Health Commissioner
Virginia Department of Health

MEMORANDUM OF UNDERSTANDING
Between the
Virginia Department of Health,
The Virginia Department of Housing and Community Development and
The Virginia Department of Agriculture and Consumer Services

December 2013

Statutory Authority

This agreement is established with reference to the Virginia Indoor Clean Air Act (Title 15.2 §2820-2833), Virginia Food Regulations (12 VAC 5-421), Virginia Retail Food Establishment Regulations (2 VAC 5-585) and the Virginia Uniform Statewide Building Code (USBC), (13 VAC 5-63) regarding the policies and procedures pursuant to these Acts and regulations.

Purpose

With the Governor's signing of House Bill 1703, smoking in restaurants was prohibited effective December 1, 2009, with limited exceptions. One of these exceptions includes the construction of an area inside a restaurant where smoking may occur provided it is:

“(i) structurally separated from the portion of the restaurant in which smoking is prohibited and to which ingress and egress is through a door and (ii) is separately vented to prevent the recirculation of air from such area to the area of the restaurant where smoking is prohibited. At least one public entrance to the restaurant shall be into an area of the restaurant where smoking is prohibited.”

Statutory authority has been granted to the Virginia Department of Health to inspect for compliance with this section. The Virginia Department of Health (VDH), the Virginia Department of Housing and Community Development (VDHCD), through local building departments, and the Virginia Department of Agriculture and Consumer Services (VDACS) have regulatory authority to review the construction and renovation of restaurants. Additionally, VDACS and VDH share responsibility for inspecting certain types of restaurants. To eliminate as much overlap, conflict, or duplication as possible, an agreement between VDH, VDHCD, and VDACS is established by this Memorandum of Agreement.

In order to assure this agreement can be implemented, VDH, VDHCD, and VDACS recognize that there are major areas of regulatory responsibility with respect to the review of construction and renovation in restaurants. These are identified in Part I of this agreement and relate to the responsibilities that VDH, VDHCD, and VDACS each have with respect to this new law. Additionally, both VDH and VDACS share responsibility for inspecting restaurants in Virginia. Gas stations and convenience stores with fifteen or fewer seats are inspected by VDACS whereas all other restaurants are inspected by VDH. Responsibility for compliance with this law at all restaurants across the state is described in Part II of this agreement. The following agreement outlines the responsibilities assigned to each agency in accordance with these areas.

I. Restaurant Construction and Renovation

a. Permits and Plan Review Services – Local Building Official

When a permit applicant for a new restaurant submits plans, which include a separate area for smoking; or plans for the renovation of an existing restaurant that include a separate area for smoking, to the local building official for review and approval, the building official will evaluate the restaurant design for:

- i. Compliance with the USBC-Virginia Construction Code for separately vented requirements applicable to smoking areas and for separation of the smoking area from the non-smoking area to prevent recirculation of air and the migration of smoke. The ingress/egress door to the smoking area is required to be capable of remaining in the closed position and is not required to be self-closing.
- ii. Upon completion of the review, the building official will issue an approved building permit to the permit applicant that verifies the area designated a smoking area is in compliance with all applicable provisions of the USBC.

b. Permits and Plan Review Services – Local Health Department

When a permit applicant for a new restaurant submits plans, which include a separate area for smoking; or plans for the renovation of an existing restaurant that include a separate area for smoking, to the Local Health Department (LHD) as required by 12 VAC 5-421-3600, the LHD, upon receipt of written verification or the copy of the approved building permit and construction documents from the local building official that the area designated as a smoking area is in compliance with the USBC, will evaluate the restaurant plans for:

- i. Ingress and egress into the area through a door that remains closed when not being actively used for ingress or egress.
- ii. At least one public entrance to the restaurant in the area of the restaurant where smoking is prohibited.
- iii. Posted signs stating “No Smoking” or signs containing the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it clearly and conspicuously in the restaurant where smoking is prohibited.

c. Plan Review Services—VDACS

When a new restaurant gas station or convenience store with fifteen or fewer seats submits plans, which include a separate area for smoking; or plans for the renovation of an existing restaurant gas station or convenience store with fifteen or fewer seats that include a separate area for smoking, to VDACS as required by 2 VAC 5-585-3600, VDACS, upon receipt of written verification or the copy of the approved building permit and construction documents from the local building official that the area designated as a smoking area is in compliance with the USBC, will evaluate the restaurant gas station or convenience store plans with fifteen or fewer seats for:

- i. Ingress and egress into the area through a door that remains closed when not being actively used for ingress or egress.
- ii. At least one public entrance to the restaurant in the area of the restaurant where smoking is prohibited.

- iii. Posted signs stating “No Smoking” or signs containing the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it clearly and conspicuously in the restaurant where smoking is prohibited.

II. Restaurant Inspections

Whereas VDACS has regulatory authority to inspect restaurant gas stations and convenience stores with fifteen or fewer seats and VDH has regulatory authority to inspect all other restaurants in Virginia, both agencies will inspect for compliance with this law as follows:

- i. Verify that the proprietor posts signs stating “No Smoking” or containing the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it, clearly and conspicuously in every restaurant where smoking is prohibited
- ii. Verify that the proprietor has removed all ashtrays and other smoking paraphernalia from any area in the restaurant smoking is prohibited

If alleged non-compliance is observed during restaurant inspections conducted by VDACS at gas stations or convenience stores with fifteen or fewer seats, VDACS will notify the local health department of their observations after informing the proprietor of the standards listed above.

III. Agreement and Consent

This agreement shall be effective upon the signature of the State Commissioner of Health, the Director of Housing and Community Development, and the State Commissioner of Agriculture, and shall remain in effect until modified or terminated by mutual agreement of the agency heads. Any agency may terminate their participation in this agreement by notifying the other of their intent thirty-days prior to such termination.

This memorandum of agreement is for the purpose of facilitating cooperation between three agencies of the Commonwealth. It does not intend to create, nor does it create any rights in any fourth party.



Marissa J. Levine, MD, MPH
Interim State Health Commissioner
Virginia Department of Health

2/20/14

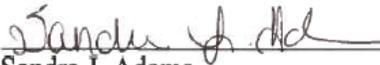
Date



William C. Shelton
Director
Department of Housing and
Community Development
for the Board of Housing and
Community Development

5-1-14

Date



Sandra J. Adams
Acting Commissioner
Virginia Department of Agriculture

03/05/2014

Date



COMMONWEALTH of VIRGINIA

Department of General Services

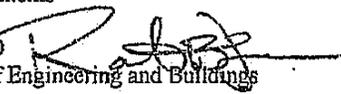
Division of Engineering and Buildings

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Suite 506
Richmond, Virginia 23219
(804) 786-3263
Voice/TDD (804) 786-6152
FAX (804) 371-7934

November 6, 2009

MEMORANDUM

TO: All Local Building Departments

FROM: Robert B. Jones, RA, CBO
Director of the Division of Engineering and Buildings 

RE: Delegation of Authority

Pursuant to Section 36-98.1 of the *Code of Virginia*, you are delegated inspection and enforcement authority for state-owned underground and aboveground storage tank systems for the purpose of issuing permits, Certificates of Use and performing inspections required by the State Water Control Board Regulations, 9VAC25-580, Underground Storage Tanks: Technical Standards And Corrective Action Requirements, and 9VAC25-91, Facility And Aboveground Storage Tank (AST) Regulation. This delegation applies to all state agencies and institutions, except the Department of Transportation and the Department of State Police. In performing these services, you may charge state agencies the same fees as would be paid by private entities for the services rendered.

The Department of General Services, acting through the Director of the Division of Engineering and Buildings, may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Director shall provide the local building department with a written summary of the reasons for doing so.