



LEGISLATIVE REQUESTS

2023

Septic Tanks

Background: More than a million Virginia families have septic systems at home. State officials estimate about half those systems are so old they pose health and environmental risks. In addition, homeowners are combating septic failures from climate change, increased costs to upkeep, and lack of historical information associated with their tanks.

***Request:* FAAR supports legislation for a comprehensive study of septic systems in the Commonwealth, specifically requiring local health departments to digitize septic system records and link to tax documents that can be accessed by the general public. FAAR also supports legislation creating a permanent source of funding from the state to replace, repair, pump out, or remove old systems.**

Virginia Fair Housing Act

Background: In 2021, the Virginia General Assembly adopted a new section of the Virginia Fair Housing Act (§36-96.3C) that prohibits local government, its employees, or commissions from discriminating in the application of local land use ordinances or permitting of housing developments based on the real or perceived income level of the expected occupants if their income is at or below 80 percent of the area median income (AMI). The section further states that "It shall not be a violation of this chapter if land use decisions or decisions relating to the permitting of housing developments are based upon considerations of limiting high concentrations of affordable housing." While well intended, this final sentence is vague enough as to render the preceding prohibition meaningless. Localities can point to an unquantified threshold of "high concentration of affordable housing" to circumvent the fair housing prohibition. Furthermore, local governments already have tools at their disposal to prevent the concentration of affordable housing by using comprehensive plans and zoning code ordinances. As a result, this clause is duplicative at best and detrimental to the development of affordable housing at worst.

***Request:* FAAR supports legislation to either strike "It shall not be a violation of this chapter if land use decisions or decisions relating to the permitting of housing**



developments are based upon considerations of limiting high concentrations of affordable housing” or defining in specific terms what “high concentration of affordable housing” means to prevent the sentence from being used as a loophole.

Resale Disclosure Act

Background: The Resale Disclosure Act requires a seller to deliver the resale certificate to the purchaser. This is contrary to common practice where seller agents typically deliver the certificate to purchaser agents. Not including "purchaser agents" in the code creates liability concerns for seller agents who deliver a certificate to purchaser agents, but not directly to the purchaser themselves.

***Request:* FAAR supports legislation to insert "purchaser's agent" into 55.1-2309 and anywhere else necessary in the code to protect the common practice of seller agents delivering resale certificates to purchaser agents.**

Wholesaling

Background: The practice of wholesaling is becoming more common in the real estate market. Wholesaling is the practice selling an existing sale contract. Typically, a wholesaler will purchase an existing contract and then market that contract for sale. Another method is for a wholesaler representing a purchaser to find a property already under contract and purchase the contract. The Virginia Code does not define wholesaling as a real estate activity and as a result, licensees who engage in wholesaling are doing so without legal guidance.

***Request:* FAAR supports legislation to define wholesaling as real estate activity, thereby providing a legal framework to protect licensees and their clients from liability.**

Waiver of Rights Under Resale Disclosure Act

Background: Under the new Resale Disclosure Act (RDA) certain language regarding variation by agreement was omitted by the recent recodification. In the old §55.1-1808 of the Property Owners' Association Act (POAA), subsection (G) stated, "Except as expressly provided in this chapter, the provisions of this section and §55.1-1809 [regarding delivery of the resale disclosure packet to the Purchaser in a real estate transaction] may not be varied by agreement, and the rights conferred by this section and §55.1-1809 may not be waived." This language has not been included in the RDA, eliminating a significant consumer protection and allowing for the right of cancellation and the right of delivery conferred by the RDA to be waived by the Purchaser in a real estate transaction. These rights were created to give Purchasers the opportunity to review resale certificates to ensure the



properties they were purchasing were not subject to violations and were part of common interest communities that had adequate reserves.

Further, §55.1-1902 (Condos) and §55.1-2102 (Co-ops) are still in effect, creating a discrepancy between purchases within property owners' associations and other types of common interest communities. By these existing statutes, the rights conferred cannot be varied by agreement but this language no longer exists in the POAA. Additionally, §55.1-1972 in the Condo Act lists specific exemptions from the obligations under the RDA, creating another discrepancy as purchasers in general real estate transactions are not listed; however, as the RDA currently reads, purchasers can exempt themselves by agreement, rendering the change to this statute with the recodification useless.

Request: FAAR supports adding the language prohibiting variation by agreement and waiver of the rights conferred by the RDA back to the RDA to correct these discrepancies and to protect purchasers of properties within common interest communities.

