

VIRGINIA CODE COMMISSION

Monday, October 17, 2016 - 10:00 a.m.

General Assembly Building, 6th Floor

Speaker's Conference Room

Richmond, Virginia 23219

1 **MEMBERS PRESENT:** John S. Edwards; James M. LeMunyon; Gregory D. Habeeb; Ryan T.
2 McDougle; Carlos L. Hopkins; Leslie L. Lilley; Robert L. Calhoun, Jr.; E.M. Miller, Jr.; Thomas
3 M. Moncure, Jr.; Chris Nolen; G. Timothy Oksman; Mark Vucci

4 **MEMBERS ABSENT:** Charles S. Sharp

5 **STAFF PRESENT:** Ryan Brimmer, Beth Jamerson, Brittany Olwine, Tom Stevens, Amigo Wade,
6 Lisa Wallmeyer, Kristen Walsh, Jane Chaffin, Karen Perrine, Division of Legislative Services
7 (DLS)

8 **OTHERS PRESENT:** Karen Grim, Department of Motor Vehicles; John G. "Chip" Dicks,
9 FutureLaw

10 **Call to order:** Senator Edwards, Chair, called the meeting to order at 10:05 a.m.

11 **Approval of minutes:** The minutes of the September 19, 2016, meeting of the Commission as
12 printed and distributed to the members were approved without objection.

13 Delegate LeMunyon stated that he does not object to the minutes; however, he noted that the
14 minutes indicate that the issue of the codification of Section 1 bills and enactment clauses by the
15 Commission will be discussed further by the Commission. He further stated that the General
16 Assembly should understand the role of the Commission and its decisions regarding codification.

17 Delegate Habeeb recommended that an item be added to the next meeting agenda for the purpose of
18 fully reviewing and discussing this issue. He expressed concerns regarding codification by the
19 Commission and the current Executive Committee process and stated that he believes the
20 Commission needs to either educate the General Assembly or change the current process.

21 Mr. Calhoun noted that each print volume and supplement of the Code of Virginia states on the title
22 page that the volume includes "all acts adopted...", which is not accurate, because all acts are not
23 codified. Staff will contact LexisNexis about addressing this statement at the next Commission
24 meeting.

25 Delegate LeMunyon clarified that he is not advocating changing the current policy regarding
26 codification. However, the Commission needs to be transparent and should have a succinct
27 statement on its website describing what the Commission does without General Assembly approval
28 and what the Commission does with General Assembly approval (e.g., recodifications).

29 Senator Edwards directed staff to place this matter on the agenda for the next meeting.

30 **Nonresident Violator Compact of 1977:** Jane Chaffin stated that the Nonresident Violator
31 Compact of 1977 is the last compact to complete implementation of the Commission's decision to
32 set out the full text of all compacts in the Code of Virginia. Karen Grim, Department of Motor
33 Vehicles, explained how the compact operates and noted that it applies only to traffic violations.

34 Beth Jamerson presented a draft bill for the Commission's consideration and approval. Ms.
35 Jamerson stated that the bill contains no substantive changes and simply places the compact in the
36 Code of Virginia. Judge Lilley recommended adding a definition of "traffic violation."

37 After a brief discussion, Delegate LeMunyon moved that the Commission approve the draft bill
38 with the addition of a definition of "traffic violation." The motion was seconded by Mr. Calhoun
39 and passed.

40 **Reorganization of § 58.1-322 of the Code of Virginia:** Lisa Wallmeyer reviewed the background
41 of this agenda item, previously considered at the Commission's meetings on May 16, 2016; June 20,
42 2016; and September 19, 2016. At the September meeting, Ms. Wallmeyer presented a draft bill that
43 did not make any substantive changes and divided § 58.1-322 into four sections, with § 58.1-322
44 covering the basic premise of the section. The draft bill placed additions to income in § 58.1-
45 322.01, subtractions in § 58.1-322.02, deductions in § 58.1-322.03, and additional modifications in
46 § 58.1-322.04. The draft bill also included other Code sections containing references to current §
47 58.1-322 that were amended to reflect the correct new Code section. After review of the draft bill at
48 the September meeting, the Commission requested that Ms. Wallmeyer follow up with relevant
49 stakeholders and present a revised draft bill with amendments to § 58.1-321 that remove obsolete
50 provisions from that section.

51 In follow-up to the Commission's requests, Ms. Wallmeyer stated she worked with the Virginia
52 Society of Certified Public Accountants (VSCPA). The VSCPA forwarded the draft bill to its
53 members and reported that it did not receive any negative feedback. Ms. Wallmeyer advised that the
54 revised draft bill before the members includes removal of outdated provisions from § 58.1-321
55 (lines 227–237, 244–246, and 248–254) as requested by the Commission at its last meeting.

56 On motion by Delegate Habeeb and seconded by Mr. Moncure, the Commission approved the draft
57 bill as presented.

58 **Recodification of Title 55, Property and Conveyances:**

59 Subtitle III, Rental Conveyances.

60 Amigo Wade stated that at its September 19, 2016, meeting the Commission directed staff to clarify
61 the applicability provisions for the residential tenancy chapters and add a definition of the term
62 "residential tenancy." Mr. Wade presented staff recommendations to (i) add the definition of
63 "residential tenancy" for all of Part A (line 158); (ii) revise the applicability provision of Chapter 1
64 to establish a clear "roadmap" for the applicability of each of the three residential tenancy chapters
65 (lines 345–376); (iii) place references regarding the applicability of the residential tenancies to
66 occupancies at hotel, motel, and extended stay facilities in a single section in Chapter 1 (lines 408–
67 433); and (iv) add a definition of "multifamily dwelling" for all of Part A to provide additional
68 clarity regarding the applicability of Chapter 2. Mr. Wade provided a handout with a revised
69 definition of "multifamily dwelling" to replace the definition in the draft bill based on suggestions
70 from the work group, as follows: "Multifamily dwelling unit" means more than one single family
71 dwelling unit located in a building. However, nothing in this Part A shall be construed to apply to
72 any non-residential space in such building."

73 Mr. Wade presented proposed Articles 3 through 5 of Chapter 2 (Virginia Residential Landlord
74 Tenant Act) and Chapters 3 (Other Residential Tenancies), 5 (Residential Ground Rent Act), 7
75 (Deeds of Lease), and 8 (Emblements) of Title 55.1.

76 Articles 3 (Tenant Obligations), 4 (Tenant Remedies), and 5 (Landlord Remedies) of Chapter 2 - 77 Virginia Residential Landlord Tenant Act.

- 78 • Lines 818 and 833 (§ 55-248.23): Mr. Wade stated that the work group is continuing its review
79 of the concern raised at the last meeting regarding the definition of "essential services."

- 80 • Line 855 (§ 55-248.24): Judge Lilley and Mr. Vucci asked that the work group review and
81 clarify the use of the word "account" in the language requiring the landlord to account to the
82 tenant for the security and prepaid rent in recovering certain damages.
- 83 • Line 1117 (§ 55-248.31 G): Judge Lilley questioned the addition of "for physical damage" in
84 clause (vi). Ms. Walsh stated that the purpose was to differentiate between monetary damages
85 and physical damages. Chip Dicks, a member of the Rental Conveyance sub-work group,
86 explained that there are two types of damages in the landlord/tenant area, and the work group
87 wanted to clarify back rent versus physical damage. Mr. Dicks stated that the work group would
88 not object if the Commission had concerns and wanted to remove the proposed language. Mr.
89 Hopkins moved to remove "for physical damage" from the draft bill. The motion was duly
90 seconded and carried.

91 Chapter 3 - Other Residential Tenancies.

- 92 • In response to a question from Delegate Habeeb, Mr. Dicks explained that legislation will likely
93 be introduced in 2017 to eliminate the differences between the two bodies of law regarding
94 residential tenancies and to address the rights and responsibilities of property managers. To the
95 extent there may be inconsistencies in the 2017 legislation and the recodification, it is
96 anticipated that these issues can be resolved by the work group next year.
- 97 • Line 199 (§ 55-225.12): Mr. Miller asked if the addition of "or his agent" affects the common-
98 law concept of "agency." Mr. Wade explained that the addition was made to conform to the
99 definition of "agent" in the current Virginia Residential Landlord Tenant Act. Mr. Dicks
100 indicated that the work group had no objection to removal of "or his agent." Senator McDougle
101 moved to remove "or his agent" from line 199. The motion was seconded by Mr. Hopkins and
102 carried.
- 103 • Line 574 (§ 55-240): Senator McDougle asked about replacing "12 months" with "365 days."
104 Ms. Walsh advised that usual practice is to use "12 months" in the Code of Virginia but that
105 staff will review the question.
- 106 • Judge Lilley questioned moving provisions related to warrants of distress to Title 8.01. Ms.
107 Walsh stated that Title 8.01 has other remedies applicable to landlord/tenant, such as unlawful
108 detainer. Mr. Dicks advised that legislation in 2017 should reduce and narrow the conflict with
109 the common law and that the work group supports placing all procedural provisions in Title
110 8.01. The consensus of the Commission was to review this issue after the 2017 Session.

111 Mr. Nolen excused himself and left the meeting.

112 Chapter 5 - Residential Ground Rent Act.

113 Mr. Wade explained that this chapter deals with a situation where the tenant owns the property but
114 not the land. The provisions are not used often but do occasionally apply in Virginia; therefore, the
115 provisions need to be retained. This chapter does not apply to a commercial situation.

116 Chapter 7 - Deeds of Lease.

117 Lines 59 and 61 (§ 55-77): The Commission directed staff to review whether "he" should be
118 changed to "lessee" or "lessor."

119 Chapter 8 - Emblements.

120 Mr. Wade explained that this chapter pertains to a tenant's right to harvest crops that the tenant
121 planted if the tenancy has been terminated. The work group reviewed whether the provisions were
122 still in use in Virginia, and it was determined that the provisions are still being used. The changes
123 are mostly technical in nature.

124 Mr. Wade concluded his presentation by stating that there are two remaining chapters in Subtitle III,
125 which are expected to be presented at the November meeting. He also advised that the Common
126 Interest Communities Sub-Work Group has met to begin its work on Subtitle IV.

127 Mr. Oksman requested that staff inform the Commission of any significant disagreement among the
128 members of a work group.

129 **Technical Corrections to Title 23.1 - Institutions of Higher Education; Other Educational and**
130 **Cultural Institutions:**

131 Mr. Brimmer presented a proposed letter asking the Code publishers to make a number of global
132 citation and terminology changes throughout the Code of Virginia to conform to Title 23.1. He
133 requested approval from the Commission to send the letter to publishers of the Code of Virginia.
134 After discussion of several items in the letter, the Commission tabled consideration of the letter
135 until the next meeting.

136 Mr. Brimmer presented a summary and proposed bill draft to correct typographical errors and to
137 make other technical amendments relating to Title 23.1. After discussion, the Commission
138 requested that Mr. Brimmer (i) remove enactment clause 1 from the bill and (ii) remove instances
139 where "institution of learning" is changed to "school" (e.g., lines 1451, 1454, and 1667). Mr.
140 Brimmer will report on these items as needed at the next meeting.

141 A motion was made and properly seconded to approve the bill as amended. The motion carried.

142 **Public comment; adjournment:** Senator Edwards opened the floor for public comment. As there
143 was no public comment and no further business to discuss, the meeting was adjourned at 12:35 p.m.