



2016 Legal Seminar

**Presented by
Delphine G. Carnes**

December 2, 2016

**Crenshaw, Ware & Martin, PLC
150 W. Main Street, Suite 1500
Norfolk, VA 23510
(o) 757-623-3000 (f) 757-623-5735
www.cwm-law.com**



OVERVIEW

Public Housing Authorities (PHAs) in Virginia

Overview of PHAs and laws governing them

What can PHAs do?

Overview of powers of limitations

What is the role of Commissioners?

Overview of roles and responsibilities

How do PHAs keep up-to-date?

Overview of recommended training and policy review practices



- Public Housing Authority
 - Any state, county, municipal, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.
- Virginia is one of only a few states that permit housing and redevelopment in same entity



What is a PHA?

Creature of statute

- **1937** -Authorized at the federal level
 - Federal Housing Act
- **1938** -Created at the state level
 - Title 36 of Virginia Code
- Activated at the local level as a political subdivision of the Commonwealth of Virginia



What can a PHA do?

- State and federal statutes enumerate powers
- General layers of authorized activity
 - Housing projects (1938)
 - Redevelopment projects (1946)
 - Conservation projects (1964)



What can a PHA do?

Housing Projects: any work or undertakings

- (i) to demolish, clear or remove buildings from any slum area,
- (ii) to provide decent, safe and sanitary urban or rural living accommodations for persons of low and moderate income, or
- (iii) to accomplish a combination of the foregoing. Va. Code Section 36-3.



What can a PHA do?

Redevelopment Projects:

- any work or undertakings to redevelop or rehabilitate areas that are, or have been, designated by a PHA (pursuant to a redevelopment plan) to be in an overall state of blight.
- Blight defined as a condition that endangers the public health, safety or welfare because the structures/improvements in the area are dilapidated, deteriorated or violate minimum health and safety standards. Va. Code Section 36-3.



What can a PHA do?

Conservation Projects: any work or undertakings to redevelop or improve areas that are, or have been, designated by a PHA (pursuant to a conservation plan) to be in a state of deterioration and in the early stages of becoming a blighted area. Va. Code Section 36-3.



What can a PHA do?

- Eminent Domain
 - Purpose is elimination of slums and blight
 - Key component to large scale initiatives
 - *Kelo v. City of New London, 545 U.S. 469 (2005)*
 - *Community benefits derived from economic growth qualified private redevelopment as a permissible "public use" under the Takings Clause of the Fifth Amendment so as to allow condemnation of privately held property by eminent domain.*



What can a PHA do?

- **Eminent Domain** Statutory amendments in 2007 (Va. Code Section 1-219.1)
 - PHAs can no longer acquire non-blighted properties pursuant to a redevelopment plan.
 - Property may only be taken by eminent domain if (i) the property itself is blighted *or* (ii) is located in a redevelopment or conservation area and is (a) abandoned, (b) the acquisition is needed to clear title or (c) the acquisition is by agreement of all of the owners.
 - New definition of blight-any property that endangers the public health or safety in its condition at the time of the filing of the petition for condemnation and is (i) a public nuisance or (ii) an individual structure that is beyond repair or unfit for human occupancy or use.



What can a PHA do?

- **Eminent Domain** Constitutional amendment in 2012
 - Section 11 of Article I of the Constitution of Virginia amended to provide that no private property shall be taken for public use without just compensation to the owner and that no more private property may be taken than necessary to achieve the state public use.
 - Just compensation now includes the value of the property, lost profits, and lost access, and the damages to the residue caused by the taking.
 - Taking of private property is not for public use if the primary purpose is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development unless the property creates a public nuisance. The condemnor bears the burden of proving that the use is public.



What can a PHA do?

- Unique powers that City does not have
 - Own and operate housing projects and residential buildings (Va. Code Section 36-19(2))
 - Use eminent domain to acquire blighted property, within limits (Va. Code Section 36.52.3)
 - Make loans or grants to prevent or eliminate slums or blight (Va. Code Section 36-19(7))
 - Make loans or grants for construction or rehabilitation (Va. Code 36-19(9))
 - Make rehabilitation loans to persons of low or moderate income as agent for federal or state agency or political subdivision (Va. Code Section 36-19(8))
 - Issue private activity bonds to assist private enterprise (Va. Code Section 36-29)
 - With City Council approval, form corporations, partnerships, joint ventures, trusts or any other legal entity on its own or with others (Va. Code Section 36-19(12))
 - Exercise powers in other municipalities upon request (Va. Code Section 36-23)



What can a PHA do?

- Relationship to City Council
 - Appointment of Commissioners for 4-year terms
 - Approval of Housing, Redevelopment and Conservation plans after adoption by PHA
 - Funding under CDBG program
 - Funding under HOME homeowner assistance program
 - Funding under CIP contracts



What can a PHA do?

- Relationship to HUD
 - Original source for CDBG and HOME funds
 - Regulates and provides subsidy for public housing
 - Regulates and provides funding for Housing Choice Voucher (Section 8) activities
 - Requires reporting, including PHAS and SEMAP



Role of Commissioners

- Set broad PHA policy
- Administer PHA finances and budget
- Hire the Executive Director



Role of Commissioners

- Executive Director is responsible for
 - Implementation of Board policies
 - Financial decisions based on Board-approved budgets
 - All PHA personnel decisions
 - All day-to-day operations based on Board approved policies



Role of Commissioners

- Size of Board of Commissioners varies
 - One resident of assisted housing with all rights of other members
- All act as fiduciaries of public funds
- All operate within By-Laws of PHA
 - Officers and Elections
 - Meetings and Quorums
- Indemnified by PHA for reasonable business acts
- Liability limited to amount of annual compensation
 - PHA may pay each Commissioner up to \$150 per month as compensation for his or her services (Va. Code Section 36-11.1:1)



Role of Commissioners

- Freedom of Information Act - Public Meetings
 - All items of public business must be decided in public, at duly noticed public meeting (Va. Code Section 2.2-3707(A))
 - Meeting is public if at least 3 Commissioners discuss PHA business (Va. Code Section 2.2-3701)
 - Must be noticed at least 3 working days in advance of the meeting in a “prominent public location at which notices are regularly posted” and in the office of the Executive Director (Va. Code Section 2.2-3707(C))
 - Not permissible by phone or electronically (very limited exceptions for emergencies) (Va. Code Section 2.2-3707(B))



Role of Commissioners

- Freedom of Information Act – Closed Meetings
 - Only for discussing specific matters (Va. Code Section 2.2-3711(A))
 - Personnel
 - Acquisition and disposition of real estate
 - New businesses
 - Investment of public funds where competitive bidding involved
 - Legal matters
 - No votes can be taken in closed session (Va. Code Section 2.2-3711(B))



Role of Commissioners

- Freedom of Information Act – Closed Meetings
 - Strict procedure for going into closed meeting
 - Resolution citing:
 - The specific matter(s) to be discussed
 - The Virginia Code section that exempts such matter(s) from public disclosure
 - Strict procedure for coming out of closed meeting
 - Resolution certifying:
 - Only matter(s) exempt from open meeting requirements were discussed
 - Only matters identified in the resolution convening the closed meeting were discussed



Role of Commissioners

- Freedom of Information Act – Public Records
 - Open to inspection and copying
 - Reason for request is irrelevant
 - Response within 5 business days
 - May request 7 business day extension in writing
 - Many records are exempt from disclosure
 - Personnel information
 - Vendor Proprietary information
 - Attorney-client work product and communications
 - Signed contracts, employment contracts must be available
 - Records relative to contract negotiations prior to award are exempt
 - PHA may make reasonable charges for searching and for copies



Role of Commissioners

Conflict of Interests Act

- Personal interest in a transaction
 - Ownership, or option for ownership, in a business (>3%)
 - Income from property or business (>\$5,000 per year)
 - Salary or benefits (>\$5,000 per year)
 - Ownership of property (>\$5,000)
 - Personal liability on behalf of business (>3% total value of business)
- Extends to Commissioner and immediate family



Role of Commissioners

Conflict of Interests Act

- Disqualification *and* disclosure required where transaction applies to property or business in which Commissioner has a personal interest
 - Disclosure must be written
 - Disqualified Commissioner cannot:
 - Vote on transaction
 - Discuss transaction during, or outside of, meetings
 - Attend closed meetings related to transaction

- Disclosure (but not disqualification) required:
 - Personal interest arises from membership in a business or group of 3 or more
 - Personal interest arises through representation by Commissioner's firm or business, but not Commissioner personally
 - Disclosure may be written or made orally and recorded in the minutes



Role of Commissioners

Conflict of Interests Act- Written disclosures

- Disclosure when voting
 - Personal interest arises by reason of membership in group (of 3 or more) affected by the transaction
 - Description of transaction
 - Nature of personal interest
 - Name of group affected
 - Certify ability to participate fairly, objectively and in public interest
 - Personal interest arises by reason of representation of party to the proposed transaction by Commissioner's business or firm
 - Description of transaction
 - Name of Commissioner's business or firm
 - Name of client represented
 - Certify ability to participate fairly, objectively and in public interest



Role of Commissioners

Conflict of Interests Act- Written disclosures

- Disclosure when abstaining
 - Description of transaction
 - Nature of personal interest
 - Name and address of business or real estate parcel (as applicable)



- Other statutes
 - Government Data Collection and Dissemination Practices Act
 - Protects personal information
 - Public Procurement Acts (state and federal)



Keeping up-to-date

- Orientation for New Commissioners (open to full Board)
- Comprehensive written policies – reviewed and updated regularly
 - Conflict of Interest, Public Procurement, etc.
- Regular periodic training sessions on policies and programs
 - RAD, LIHTC, HOME, CDBG, PHAS, SEMAP, FOIA, COIA, etc.

Delphine G. Carnes

CRENSHAW, WARE & MARTIN, P.L.C.

150 W. Main Street, Suite 1500

Norfolk, VA 23510

Office (757) 623-3000

dcarnes@cwm-law.com

www.cwm-law.com

