

# 2013 VIRGINIA REAL ESTATE LEGISLATIVE UPDATE

## I. TAX-RELATED

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### HB 1553 Real property tax assessment; affordable housing.

Introduced by: [G. Manoli Loupassi](#) |

**Real property tax assessment; affordable housing.** Modifies the special means of assessing the value of affordable rental housing units by permitting a taxpayer who owns certain multiple units and has expenses that are common to two or more units to make a pro rata apportionment of such expenses to each such unit based on each unit's assessed value as a percentage of the total assessed value of all such units. The bill covers the units whether they are in a single tax parcel or multiple tax parcels.

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### HB 1598 Real property tax; boards of equalization.

Introduced by: [Richard L. Anderson](#) |

**Real property tax; boards of equalization.** Modifies several provisions governing boards of equalization including (i) modifying qualifications for membership of certain boards; (ii) authorizing boards to receive complaints electronically as long as taxpayers may also file complaints on paper forms; (iii) prohibiting a board to deny relief based on a lack of information from the taxpayer as long as certain specified information is provided; (iv) providing procedures by which a taxpayer may appoint a representative; (v) providing procedures to be followed before a board may increase assessments on certain types of property; and (vi) setting deadlines for consideration of certain information.

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### HB 1697 Real property tax; land use valuation.

Introduced by: [J. Randall Minchew](#) |

**Real property tax; special valuation for land preservation.** Makes it optional for localities to impose roll-back taxes when the owner of real property that qualifies for special land use valuation has the property rezoned for a more intensive use. Under current law, imposition of such taxes is mandatory.

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### SB 799 Real property tax; special valuation for land preservation.

Introduced by: [Thomas A. Garrett](#) |

**Real property tax; special valuation for land preservation.** Permits Goochland County to adopt certain variations in administering the special valuation of real property for land preservation for real property in service districts created after July 1, 2013.

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## SB 1065 Arts and cultural districts, local; tax incentives.

Introduced by: [Mark R. Herring](#) |

**Local arts and cultural districts; tax incentives.** Permits a locality to include the reduction or rebate of real estate property taxes among the tax incentives it makes available in an arts and cultural district established by ordinance. Current law provides for reductions in three other types of taxes or fees as examples of permissible incentives. [HB 1586](#) is identical to this bill.

## II. CIRCUIT COURT CLERKS/RECORDATION

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### HB 1507 Deeds; circuit court clerk has authority to reject any deed or recordation for filing, etc.

Introduced by: [Lynwood W. Lewis, Jr.](#) |

**Recording deeds; statement of preparation.** Clarifies that the circuit court clerk may reject for filing or recording a deed conveying not more than four residential dwelling units if the deed does not state on its first page that it was prepared either by the owner of the property or by an attorney licensed to practice in Virginia. The bill further clarifies that a deed of trust need not contain such a statement regarding its preparation.

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### HB 1658 Circuit court clerks; revises various powers and duties for certification of records, etc.

Introduced by: [C. Todd Gilbert](#) |

**Clerk's fees; electronic records; certification of records; etc.** Revises various powers and duties of circuit court clerks for certification of records, assessment of fees, etc., such as (i) providing that the use of the term "copy teste," "true copy," or "certified copy" is prima facie evidence that a document is a certified copy of the official record kept in the clerk's office; (ii) providing that no judgment for certain assessments or fees shall be recorded as a judgment in favor of the Commonwealth if such assessments or fees have been fully paid by the date of sentencing; (iii) defining "operational expenses," which are funded by certain clerk's fees, to include various technology maintenance and enhancements; (iv) clarifying that a clerk shall forward an abstract of certain convictions to the Department of Motor Vehicles within 18 days after such conviction or, in the case of civil judgments, within 30 days after the judgment has become final; (v) allowing the clerk to maintain records in adoption cases in electronic format; and (vi) repealing the requirement that a clerk verify the accuracy of a record made by him.

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### HB 1715 Circuit court clerks; electronic filing and records, remote access.

Introduced by: [Salvatore R. Iaquinto](#) |

**Clerks of circuit courts; electronic filing and records; remote access.** Makes various changes to the provisions that allow circuit court clerks to provide remote access to certain records and to charge a fee for such access. The bill also directs that fees assessed for electronic filing of cases and other records and accessing certain records remotely shall be paid to the clerk's nonreverting local fund to be used to cover the clerk's operational expenses.

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## HB 1716 Circuit court clerks; allowed to establish and maintain their own case management systems, etc.

Introduced by: [Salvatore R. Iaquinto](#) |

**Clerks' fees; case management systems, etc.** Allows circuit court clerks to establish and maintain their own case management systems, financial management systems, or other independent technology. Data from a clerk's independent system may be provided directly to designated state agencies or to such agencies through an interface with the systems of the Executive Secretary of the Supreme Court of Virginia. The Executive Secretary shall provide an electronic interface to the data available on his systems to a circuit court clerk upon the clerk's written request. The bill also defines the term "operational expenses" and requires the clerks to submit certain data in a format acceptable to the Central Criminal Records Exchange.

### **III. LANDLORD/TENANT:**

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#### **HB 1734 Virginia Residential Landlord and Tenant Act; technical amendments.**

Introduced by: **G. Manoli Loupassi** |

**Virginia Residential Landlord and Tenant Act.** Provides that where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to the forwarding address provided by the tenants. If the tenants do not provide the landlord a forwarding address to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day statutory period, the balance of the tenants' security deposit shall escheat to the Commonwealth and shall be paid into the state treasury and credited to the Virginia Housing Partnership Revolving Fund. Upon payment to the Commonwealth, the landlord shall have no further liability to the tenant relative to the security deposit and is deemed in compliance with real estate licensing laws and corresponding regulations of the Real Estate Board. The bill also allows a landlord to proceed to obtain possession of the premises when rent is unpaid within five days after the landlord's pay or quit notice because an electronic fund transfer has been rejected due to insufficient funds or a bad faith stop order on an electronic payment by the tenant. In addition, the bill provides in the case of a month-to-month tenancy for a single family residence the lease may provide for a notice of termination period other than 30 days. Under current law such tenancy may be terminated by either party giving 30 days' notice in writing, prior to the next rent due date, of his intention to terminate. The bill contains technical amendments.

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#### **SB 1004 Landlord and tenant laws; early termination of rental agreements by victims of family abuse, etc.**

Introduced by: **Janet D. Howell** |

**Landlord and tenant law; early termination of rental agreements by victims of family abuse or sexual assault.** Provides that a tenant who is a victim of (i) family abuse, (ii) sexual abuse, or (iii) criminal sexual assault may terminate a rental agreement under certain circumstances. The bill details the instance under which termination may be sought and the process that must be followed by the tenant to effect the termination.

#### **IV. CASH PROFFERS:**

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**HB 2239 Cash proffers; shall not be used for any capital improvement to an existing facility.**

Introduced by: **Daniel W. Marshall, III** |

**Cash proffers.** Provides that cash proffers shall not be used for any capital improvement to an existing facility that does not expand facility capacity or for any operating expense of an existing facility such as ordinary maintenance or repair.

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**HB 2265 Cash proffers; locality may waive certain written notice requirements to reduce outstanding payment.**

Introduced by: **Barry D. Knight** |

**Cash proffers.** Provides that a locality may waive certain written notice requirements in order to reduce, suspend, or eliminate outstanding cash proffer payments for residential construction calculated on a per-dwelling-unit or per-home basis that have been agreed to, but unpaid, by any landowner.

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**SB 1226 Cash proffers; extends from 7 to 12 years time by which locality must begin utilization.**

Introduced by: **Richard H. Stuart** |

**Zoning; cash proffers.** Extends from seven to 12 years the time by which a locality must begin utilization of cash proffers.

## **V. MISCELLANEOUS**

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### **HB 1630 Virginia Real Estate Time-Share Act; developer control in time-share estate program, etc.**

Introduced by: [John A. Cosgrove](#) |

**Virginia Real Estate Time-Share Act; developer control in time-share estate program; control liens; foreclosure procedure.** Provides that in addition to the current developer control termination provisions and to the extent that the purchase contract or time-share instrument does not expressly provide otherwise, the developer control period shall terminate when the developer is no longer the beneficiary on deeds of trust secured on at least 20 percent of the time-share estates. Under current law, the transfer must occur when the developer has (i) transferred to purchasers legal or equitable ownership of at least 90 percent of the time-share estates or (ii) completed all of the promised common elements and facilities comprising the time-share estate project, whichever occurs last. Under the bill, the commissioner of accounts to whom an account of sale is returned in connection with the foreclosure shall be entitled to a fee, not to exceed (a) \$70, on each foreclosure of a lien on a time-share estate for unpaid past due regular and special assessments and (b) \$125 per foreclosure of a purchase money deed of trust taken back by the developer. The bill includes a second enactment clause stating the intent of the General Assembly that the provisions of the bill relating to the developer control period shall apply retroactively to all registered time-share projects to the extent that the purchase contract or time-share instrument does not expressly provide otherwise. The bill is a recommendation of the Virginia Housing Commission. This bill is identical to [SB 772](#).

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### **HB 2005 Virginia Housing Partnership Revolving Fund; renamed Virginia Housing Trust Fund.**

Introduced by: [Alfonso H. Lopez](#) |

**Virginia Housing Partnership Revolving Fund.** Renames the Virginia Housing Partnership Revolving Fund to the Virginia Housing Trust Fund and codifies language in the latest appropriation act in which \$7 million was appropriated to the Fund. The bill provides that the Department of Housing and Community Development shall (i) work in collaboration with the Virginia Housing Development Authority (HDA) to provide loan origination and servicing activities as needed to carry out the purposes of the Fund, with the costs of such services to be considered an eligible use of the Fund, and (ii) use, through HDA, at least 80 percent of the moneys from the Fund to provide flexible financing for low-interest loans through eligible organizations. Such loans shall be structured to maximize leveraging opportunities. All such funds shall be repaid to the credit of the Fund. Loans may be provided for (a) affordable rental housing to include new construction, rehabilitation, repair, or acquisition of housing to assist low or moderate income citizens, including land and land improvements; (b) down payment and closing cost assistance for homebuyers; and (c) short-term, medium-term, and long-term loans to reduce the cost of homeownership and rental housing. The bill also allows the Department to use up to 20 percent of the moneys from the Fund to provide grants through eligible organizations for targeted efforts to reduce homelessness, including (1) temporary rental assistance, not to exceed one year; (2) housing stabilization services in permanent supportive housing for homeless individuals and homeless families; (3) mortgage foreclosure counseling targeted at localities with the highest incidence of foreclosure activity; and (4) predevelopment assistance for permanent supportive housing and other long-term housing options for the homeless. The bill contains technical amendments.

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## HB 2072 Condemnation; local application process.

Introduced by: [Christopher K. Peace](#) |

**Local application process; condemnation.** Provides that no locality shall condition or delay the timely consideration of any application for or grant of any permit or other approval for any real property over which it enjoys jurisdiction for the purpose, expressed or implied, of allowing the locality to condemn or otherwise acquire the property or to commence any process to consider whether to undertake condemnation or acquisition of the property.

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## HB 2238 Recorded plats & final site plans; plan shall be deemed final once it has been reviewed & approved.

Introduced by: [Daniel W. Marshall, III](#) |

**Recorded plats and final site plans.** Provides that a site plan shall be deemed final once it has been reviewed and approved by the locality if the only requirements remaining to be satisfied in order to obtain a building permit are the submission of any other administrative documents, agreements, deposits, or fees required by the locality in order to obtain the permit. The bill also amends a 2012 act by adding an enactment that clarifies the validity of previous extensions of valid plats and site plans.

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## HB 2275 Condominium Act; expands respective declarant control period, warranty review committees.

Introduced by: [Christopher K. Peace](#) |

**Condominium Act; declarant control.** Expands the respective declarant control period during which the declarant has reserved the power to add more units to the condominium, notwithstanding the limitations in the Condominium Act, at the request of the declarant, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant. The bill details the notice that must be provided prior to any vote on the extension of declarant control and the authority that may be exercised by the warranty review committee. The bill also requires the Common Interest Community Board to develop the disclosure statement required in the event a declarant requests that the period of declarant control be extended within 30 days of the effective date of the act. Under the bill, for any condominium existing on July 1, 2013, the condominium instrument for such condominium may be amended in the manner prescribed in the relevant condominium instrument or by statute to conform to the provisions of the bill. The bill includes an emergency provision.

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## HB 2305 Community associations; restrictions on solar panels.

Introduced by: [David I. Ramadan](#) |

**Solar panels in community associations.** Clarifies that a community association may establish reasonable restrictions concerning the size, place, and manner of placement of solar energy collection devices on property designated and intended for individual ownership and use. The bill also requires the

resale certificate required under the Virginia Condominium Act and the disclosure packet under the Virginia Property Owners' Association Act to contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property. In addition, the bill adds to the seller's representation to a prospective purchaser of residential property under the Virginia Residential Property Disclosure Act that the seller makes no representations with respect to right to install or use solar energy collection devices on the property.

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## SB 744 Derelict nonresidential building or structure; demolition by locality.

Introduced by: [Richard H. Black](#) |

**Demolition of a derelict nonresidential structure with consent.** Authorizes a locality to demolish or remove a derelict nonresidential structure and to file a lien against the property for the cost of the demolition or removal. The bill requires the locality to obtain the written consent of the property owner, and the property owner shall make a reasonable effort to obtain consent from the holder of any first lien mortgage or first lien deed of trust for such demolition or removal. The bill prohibits the use of the authority to remove a building that is located in a local historic district or individually designated as a historic landmark. This bill is identical to [HB 1589](#).

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## SB 756 Perpetuities waiver; exclusions from statutory rule, nondonative transfers.

Introduced by: [John S. Edwards](#) |

**Rule against perpetuities waiver.** Corrects errors in the rule allowing a settlor of a trust with an interest in personal property to opt out of the Uniform Statutory Rule Against Perpetuities. The bill moves the opt-out provision from the Code section that applies to nondonative transfers to the section that lists other exceptions to the application of the Uniform Rule. The bill also specifies that the exception to the Uniform Rule shall not extend to an interest in real property, which does not include an interest in a corporation, limited liability company, partnership, business trust, or other entity, even if such entity owns an interest in real property. The bill further provides that the provisions of the bill are declarative of existing law.

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## SB 841 Uniform Statewide Building Code; establishment of occupancy standards for residential dwelling unit.

Introduced by: [Mamie E. Locke](#) |

**Uniform Statewide Building Code; establishment of occupancy standards for residential dwelling units by owners or managing agents.** Authorizes an owner or managing agent of a residential dwelling unit to develop and implement reasonable occupancy standards restricting the maximum number of occupants permitted to occupy the dwelling unit to two persons per bedroom. Under the bill, the occupancy standard is subject to the provisions of applicable state and federal laws and regulations. The bill also provides that the occupancy standards of an owner or managing agent shall not be enforceable under the provisions of the Uniform Statewide Building Code.

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## SB 1093 Uniform Real Property Transfer on Death Act; creation of a transfer on death deed.

Introduced by: [Emmett W. Hanger, Jr.](#) | SIGNED BY GOVERNOR

**Uniform Real Property Transfer on Death Act; adoption.** Codifies the Uniform Real Property Transfer on Death Act, which authorizes the creation of a transfer on death deed, which, when properly executed and recorded, passes title directly to named beneficiaries without probate upon the transferor's death. The uniform act was approved by the National Conference of Commissioners on Uniform State Laws in 2009. The bill contains technical amendments.

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## HB 2313 Revenues and appropriations of State; changes to revenues collected and distribution, report.

Introduced by: [William J. Howell](#)

SUMMARY AS ENACTED WITH GOVERNOR'S RECOMMENDATION:

**Revenues and appropriations primarily for transportation.** Makes several changes to the revenues collected by the Commonwealth, and the distribution of such revenues, primarily for the benefit of transportation. The changes are as follows:

The bill eliminates the \$0.175 per gallon tax on motor fuels, and replaces it with a percentage-based tax of 3.5% for gasoline and 6% for diesel fuel. The bill provides for a refund of an amount equal to a 2.5% tax paid on diesel fuel for passenger cars, pickup or panel trucks, and trucks having a gross vehicle weight rating of 10,000 pounds or less.

The bill imposes a \$64 annual registration fee on hybrid electric motor vehicles, alternative fuel vehicles, and electric motor vehicles. Current law imposes a \$50 fee on electric motor vehicles only. The revenues are designated for the Highway Maintenance and Operating Fund.

The bill raises the state sales and use tax across the Commonwealth from 4% to 4.3% and designates the increased revenues for the Highway Maintenance and Operating Fund, the Intercity Passenger Rail Operating and Capital Fund, and the Commonwealth Mass Transit Fund.

The bill establishes procedures for the collection of the state sales and use tax from retail dealers located outside Virginia for sales made into the Commonwealth, contingent upon the federal government passing legislation authorizing such collection. In the event that such revenues are collected, a portion of the revenues will be allocated to localities for education, a portion will be allocated to localities with a stipulation that some of the funds be used by the locality for transportation needs, and a portion of the revenues will be deposited in the Transportation Trust Fund. A portion will also be used to reimburse localities that currently impose a retail sales tax on the sale of certain fuels used for domestic consumption, as the bill also repeals the authority to impose such tax. If the federal government does not pass legislation authorizing the Commonwealth and other states to collect sales taxes from retail dealers located outside the respective state by January 1, 2015, then the motor fuels tax imposed on gasoline will be raised from 3.5% to 5.1% (the motor fuels tax on diesel fuel will remain at 6%, but the diesel fuel refund for passenger cars, pickup or panel trucks, and trucks weighing less than 10,000 pounds will be in an amount equal to a 0.9% tax paid). If the

federal government passes such legislation after January 1, 2015, the rate of tax on gasoline will revert to 3.5%.

The bill amends the tax on the sale of motor vehicles (the "titling tax"). Currently, the titling tax is 3%. A new rate of 4.15% will be phased in over four years.

The bill increases the share of existing general sales and use tax revenues used for transportation from a 0.50% sales and use tax to a 0.675% sales and use tax, phased in over four years. The additional allocation will be deposited into the Highway Maintenance and Operating Fund. The bill also allocates the revenues from an existing 0.125% sales and use tax to public education.

The bill imposes additional state taxes and a fee in Planning Districts meeting certain population, motor vehicle registration, and transit ridership criteria. The additional taxes and fee are a retail sales tax of 0.70%, a 2.1% tax on wholesale distributors of motor fuels, a 2.0% transient occupancy tax, and a fee on grantors of real property equal to \$0.15 per \$100 of the value of the real property sold by such persons. The transient occupancy tax and grantor's fee currently would apply only in the Northern Virginia Planning District, and the tax on wholesale distributors of motor fuels currently would apply only in the Hampton Roads Planning District (under current law, the same tax on wholesale distributors is imposed in the Northern Virginia Planning District). The retail sales tax currently would apply in both the Northern Virginia and Hampton Roads Planning Districts. The additional revenues generated in the Northern Virginia Planning District are deposited into a Northern Virginia Transportation Authority Fund, with 30% of the funds being distributed to the member localities for use on transportation projects, and the remainder to be used for regional transportation projects. The additional revenues generated in the Hampton Roads Planning District are deposited into a Hampton Roads Construction Fund to be used solely for new construction projects on new or existing roads, bridges, and tunnels, as approved by the Hampton Roads Transportation Planning Organization.

The 0.70% state sales and use taxes in Planning Districts are in addition to the 0.3% state sales and use tax increase that applies throughout the Commonwealth.

Of the increased revenues in the Highway Maintenance and Operating Fund, \$100 million in fiscal years 2014, 2015, and 2016 will be dedicated to Phase II of the Dulles Metrorail Extension Project, subject to certain conditions. Beginning in fiscal year 2020, \$20 million dollars from the Highway Maintenance and Operating Fund will be deposited into the Route 58 Corridor Development Fund.

The bill prohibits tolling on Interstate 95 south of Fredericksburg without prior approval of the General Assembly.

The bill also makes several technical changes related to the administration of these various provisions.

**For copies of the Bills or for more information, please contact:**

**Charlie L. Menges: [cmenges@mcguirewoods.com](mailto:cmenges@mcguirewoods.com)**

**Mark D. Williamson: [mwilliamson@mcguirewoods.com](mailto:mwilliamson@mcguirewoods.com)**

**Karen E. Loughman: [kloughman@mcguirewoods.com](mailto:kloughman@mcguirewoods.com)**